83-41

CASE NO. ------

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION AND PAUL ROESSLER, KEVIN CAHILL, LEE COSTELLO, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING TRUST FUND,

Petitioners,

vs.

DAVID E. SANDMAN, JOHN E. McDONALD, STUART F. YOUNG, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING TRUST FUND,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Can a United States District Court lawfully appoint an umpire under 29 USC § 186 (c)(5)B) to decide whether a resolution proposed by employer trustees of an apprentice training trust fund and opposed by the union trustees of the fund should be adopted (A) when determination of the resolution by the umpire requires interpretation and modification not only of the plan implementing the apprentice program but also of the collective bargaining agreement from which the trust agreement and plan were derived, and (B) when the union and employer association agreed to submit disputes over interpretation of the collective bargaining agreement to the exclusive grievance procedure of the collective bargaining agreement, and (C) when the union and the employer association retained the right to approve or reject any amendments to the trust agreement or to the plan.

2. Does the term "administration" in 29 USC § 186 (c)(5)(B) mean only those acts of a day-to-day managerial nature over which the trustees have been given full and final authority by the union and employer association?

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OPINIONS BELOW

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The per curiam opinion of the Sixth Circuit was recommended for publication, but has not yet appeared in the Federal Reporter. In the Sixth Circuit and in the District Court below this case was entitled: *David E. Sandman, John E. McDonald, Stuart F. Young, Trustees of Sheet Metal Workers Local 141 Apprentice Training Fund* v. *Local Union 141, Sheet Metal Workers International Association; Paul Roessler, Kevin Cahill, Lee Costello, Trustees of Sheet Metal Workers Local 141 Apprentice Training Trust Fund.*

The opinion of the Sixth Circuit below in Case No. 82-3098

is dated April 29, 1983 and is set forth verbatim in Appendix A hereto.

The decision of the District Court below in Case No. C-1-81-393 is entitled "Memorandum Opinion And Order Granting Plaintiffs' Motion For Summary Judgment and Denying Defendants' Motion For Summary Judgment." It was filed on January 13, 1982 in the United States District Court for the Southern District of Ohio, Western Division. It has not been published. It is set forth verbatim in Appendix B hereto.

GROUNDS FOR JURISDICTION OF THE SUPREME COURT

Petitioners seek review of the Sixth Circuit's decision dated and entered April 29, 1983. The Supreme Court has jurisdiction to review the judgment of the Sixth Circuit under 28 USC § 1254. In affirming the District Judge's decision in this case to appoint an umpire to settle a dispute between union-appointed and employer-appointed trustees of a Taft-Hartley Trust, the Sixth Circuit has interpreted and applied a federal statute, 29 USC § 186 (c)(5)(B) in a way which conflicts with principles previously established in the decision of the Supreme Court in *NLRB* v. *Amax Coal Co.*, 453 US 322 (1981) regarding the role and authority of trustees of a Taft-Hartley Trust as collective bargaining representatives. An important federal question is presented which has not but should be decided by the Supreme Court. As more fully described hereafter, that question is whether 28 USC § 186 (c)(5)(B) requires deadlock resolution by a court-appointed umpire of a question which is primarily a collective bargaining issue rather than a matter of trust administration.

The question presented involves major principles of federal labor law including the issue of whether trustees of Taft-Hartley trusts are collective bargaining representatives with adversarial roles and the issue of whether a federal court can compel umpire arbitration of collective bargaining matters when the bargaining parties have agreed to a different

system of resolving disputes over the meaning and application of negotiated terms contained in a collective bargaining agreement.

THE STATUTE INVOLVED

The statute involved is 28 USC § 186. The entire statute is set forth in Appendix G hereto. Two subsections of § 186 are pertinent to this litigation. They are subsections (c)(6) and (c)(5)(B). The statute generally prohibits payments from employers to unions, union officers, or employees except under certain specified circumstances. The statute was generally designed to outlaw bribery, extortion and racketeering. Subsection (c) sets forth a number of exceptions to the general prohibition of payments to labor representatives. Subsection (c)(6) provides in pertinent part:

> (c) The provisions of this section shall not be applicable . . . (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: provided, that the requirements of clause (B) of the provisio to (5) of this subsection shall apply to such trust funds.

Clause (B) of the proviso to clause (5) states as follows:

> The detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the *administration* of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a rea-

sonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the District Court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such agreement;" (emphasis added)

STATEMENT OF THE CASE

I. The Nature Of The Case And Course Of Proceedings Below

On April 10, 1981 a complaint was filed in the District Court by the three employer trustees of the Sheet Metal Workers Local 141 Apprentice Training Trust Fund. The basis for federal jurisdiction asserted in the complaint was Section 301 of the Labor Management Relations Act (29 USC § 185). The defendants named in the complaint were local Union 141 of the Sheet Metal Workers International Association and the three trustees of the fund designated by Local 141.

The employer trustees alleged that at a meeting of the trustees on March 16, 1981 they submitted for vote the resolution which appears in Appendix F hereto. The resolution proposed a significant change in the ratio of journeyman to apprentices specified in the collective bargaining agreement. A tie vote on adoption of the resolution occurred with the employer trustees voting for it and the union trustees voting against it. The employer trustees further alleged in the complaint that they demanded that an impartial umpire be selected to break the tie vote and that the union trustees refused to participate in the selection of an umpire. The

employer trustees sought from the District Court an order declaring that they were entitled to the appointment of an impartial umpire to break the tie vote on adoption of the resolution.

The union and the union trustees filed their answer and counterclaim on May 21, 1981. The defendants raised seven defenses including lack of jurisdiction and failure by the plaintiffs to follow and exhaust the procedures of the collective bargaining agreement. The defendants' central defense was that there was no deadlock over affairs of the trust since the resolution proposed by the employer trustees concerned a collective bargaining issue subject to resolution under the collective bargaining agreement.

On August 31, 1981 the employer trustees filed their motion for summary judgment. A cross motion for summary judgment was filed by the union trustees and union on September 21, 1981.

On January 13, 1982 the District Court entered its opinion and order on the pending motions for summary judgment. The Opinion and Order is set forth in Appendix B hereto. The court believed that a deadlock existed concerning affairs of the trust and held that the employer trustees were entitled to the appointment of an umpire to break the deadlock. The defendants' motion for summary judgment was denied and the defendants subsequently filed their notice of appeal on January 29, 1982.

The Sixth Circuit decided and filed its opinion on April 29, 1983. The decision of the Sixth Circuit is set forth in Appendix A hereto. In its opinion, the Sixth Circuit simply recited the basic facts, summarized the arguments of each side, and affirmed the judgment of the District Court without substantial explanation. The Sixth Circuit merely adopted the reasons set forth in the opinion of the District Court without further discussion or analysis.

II. The Facts

A. The Parties.

This case involves a dispute between two groups of trustees of an apprentice training trust fund. The fund is a "Taft-Hartley Trust," being a trust fund which arose out of and was created pursuant to a collective bargaining agreement between Local 141 and the Sheet Metal Contractor's Association, Division of Allied Industries, now known as Sheet Metal Contractors Association of Greater Cincinnati, Inc., being the same two parties who were the grantors or settlors of the trust. The trust fund is jointly administered by six trustees. The union and the employer association have the right to designate three trustees each. The plaintiffs-appellees below were the employer designated trustees and the defendants-appellants (petitioners herein) are the union and the union designated trustees.

B. The Agreements.

There are three major documents involved in this case. They are: the collective bargaining agreement entitled "Sheet Metal Workers' Agreement," hereafter called "the Agreement" (Appendix C hereto); the Agreement and Declaration of Trust, hereafter called "the Trust" (Appendix D hereto); and the Sheet Metal Workers' Apprenticeship Standards for the Greater Cincinnati area, hereafter called "the Standards" (Appendix E hereto). Involved in the dispute are the provisions of the documents which govern the number of apprentices which may be employed by a contractor, the dispute resolution procedures, the amendment procedures, and some of the powers and duties of the trustees.

1. The Collective Bargaining Rgreement.

Article XI of the agreement governs employment of apprentices. Article XI, § 1 provides as follows:

> All duly qualified apprentices shall be under the supervision and control of a joint apprentice committee com-

> posed of six (6) members, three (3) of who shall be selected by the employer, and three (3) by the union. Said joint apprentice committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this agreement, to govern eligibility, registration, education, transfer, wages, hours, working conditions of duly qualified apprentices, and the operation of an adequate apprentice system to meet the needs and requirements of the trade. *Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this agreement.* (emphasis added)

Article XI, § 3 states:

> It is hereby agreed that the employer shall apply to the joint apprenticeship committee and the joint apprenticeship committee shall grant apprentices on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year. Provided, however, that the ratio for employers engaged in solar, retrofit or energy-related work shall be one (1) to three (3).

Article X of the agreement sets forth a detailed grievance procedure for settling grievances of the employer or union arising out of interpretation or enforcement of the agreement. The procedure involves essentially four steps culminating in decision by a National Joint Adjustment Board whose decision is final and binding.

The agreement contains numerous addenda covering specific terms and conditions of employment. Addendum Number 6 to the agreement provides:

> All assignments for apprentices by the JAC shall be made under stipulations as set forth in the "Standards" approved by Local No. 141 and the "Association."

2. The Trust.

The Agreement and Declaration of Trust is set forth in Appendix D hereto. It was created on July 14, 1967 to provide a vehicle for receiving the employer contributions established through collective bargaining. The purpose of the fund is to provide a training and educational program for apprentices. The powers and duties of the trustees are set forth in Article VI. Article VI (B) requires the trustees to:

> Formulate and administer a plan for the exclusive purpose of the training and education of apprentices, adopt such uniform rules and regulations as are consistent with and necessary to the performance of their duties as prescribed herein, and exercise such powers and duties as are consistent with and may be reasonably necessary to carry out the purposes of said plan.

In performing their duties, the trustees may take action at a meeting or in writing without a meeting. Article X, § 7 provides in pertinent part:

> Concurrence of a majority of the trustees shall be required for any action taken at a meeting provided, however, that no action may be taken on any matter unless there is a concurrence of at least two union trustees and two employer trustees. Concurrence of all the trustees shall be required for action taken without a meeting.

Section 8 of Article X provides a deadlock resolution clause which states:

> In the event of a deadlock among the trustees *on any of the affairs of this trust*, an impartial umpire to decide the matter in dispute shall be appointed by consent of all the trustees, and if the trustees have not selected an impartial umpire who has signified his acceptance within ten (10) days after the deadlock arose, any one or more of the trustees may petition the United States

> District Court, Southern District of Ohio, for the appointment of an impartial referee or umpire to decide such dispute. (emphasis added)

The trust may be amended only by approval of the union and the employers' association. Article XIV provides:

> The provisions of this Agreement and Declaration of trust may be amended by an instrument in writing executed by the trustees provided there are attached thereto a duly certified copy of a resolution approving such amendment adopted by the union at a regular meeting or at a special meeting called for that purpose, and a duly certified copy of a resolution by the association and attested by the secretary of the association duly approving such amendment, it being expressly understood and agreed that no amendment shall divert any of the trust estate then in the hands of the trustees from the purposes of the trust. The trustees shall have no power to amending the provisions of this plan regarding the amount of contributions thereto which shall be vested solely the commitments contained in the collective bargaining agreement between any or all participating employers and the union acting as the agent and binding thereby the rights and privileges of its members. (sic)

The trust is silent on the ratio of apprentices to journeymen to be employed. Specific operational regulations are set forth in the "Standards."

3. The Standards.

The Standards are set forth in Appendix E hereto. They were formulated by the joint apprenticeship committee (JAC) which by definition consists of the same six persons who are the trustees of the trust. The JAC was required by the collective bargaining agreement to "formulate and to make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms

of this agreement . . . ." The quoted language of the collective bargaining agreement is acknowledged and emphasized in Section Sixteen of the Standards which states in pertinent part:

> Nothing in the Standards shall be interpreted as being contrary to the present or subsequent bargaining agreement.

Section Five of the Standards sets forth rules concerning "the qualification and responsibility of the employer" which have been deemed consistent with the collective bargaining agreement since they were approved by the contractors' association and the union on June 28, 1974.

Section Five (2) states:

> JAC may place apprentices with employers at the rate of one (1) apprentices for each four (4) members of Local No. 141 on the employer's payroll.

Section Five (3) states:

> The employer shall provide, as required by JAC, such additional information to assure JAC that apprentices placed in his employ will be reasonably continuously employed.

Section Five (9) states:

> The employer agrees that the apprentice-journeymen ratio under the Standards shall be no more than one (1) apprentice for each four (4) employed journeymen members of Local 141. The employer also agrees that he must advise the office of the JAC at once if circumstances compel him to reduce the number of journeymen on his payroll to the point where he has in his employ more apprentices than established by these Standards.

C. The Disputed Resolution.

On or about March 16, 1981 the employer trustees submitted at a meeting of the JAC a resolution (Appendix F hereto) which provided as follows:

> All applying employers shall be granted one apprentice for each block of 6,400 hours of work accumulated by any and all journeymen who worked for the applying employer in the twelve month period preceding the application of the employer. Included in that 6,400 hours shall be the work time of journeymen who are members of Local 141 or of sister locals in the Sheet Metal Workers International such as travelers.

The resolution was submitted to a vote which resulted in a tie. The three employer trustees voted for it and the three union trustees voted against it.

The union trustees sought to invoke the grievance procedure of the collective bargaining agreement by requesting the aid of the Local Joint Adjustment Board in resolving the dispute arising from the resolution proposed by the employer trustees.

The employer trustees, on the other hand, demanded that an impartial umpire be selected to resolve the dispute pursuant to the deadlock provisions contained in Article X, Section 8 of the trust. When the union trustees asserted the inapplicability of the deadlock provision of the trust, the employer trustees filed their complaint for appointment of an impartial umpire to break the tie vote on the resolution which they had submitted.

The employer trustees contended that the tie vote on the resolution constituted a deadlock on affairs of the trust subject to resolution under Article X, Section 8 of the trust. The union trustees contended that the resolution proposed a change of the apprentice-journeymen ratio contrary to the specific terms of the collective bargaining agreement and contrary to the interpretation, application and practice which

had been agreed upon and uniformly followed by the collective bargaining parties. The resolution was not, therefore, an "affair of the trust" within the power of the trustees to decide.

ARGUMENT FOR ALLOWANCE OF THE WRIT

I. An Important Federal Question Is Presented

In determining whether an umpire should be appointed under 29 USC § 186 (c)(5), a District Court must apply some form of criteria. No criteria are provided by the statute and no specific criteria have been enunciated by the Supreme Court. Section 186 (c)(5) requires deadlocks between trustee groups over "administration" of a fund to be broken by a mutually agreed upon or court appointed umpire. A problem occurs, as in this case, when the court must decide if the deadlocked issue is one of "administration." Several of the circuits have addressed the problem. The decisions generally turned upon whether the deadlocked dispute was a matter of "administration."

In *Barrett* v. *Miller*, 276 F.2d 429 (2d Cir., 1960) the trustees deadlocked on a proposal that a welfare fund become self-insured with respect to certain benefits. Relying on language in the trust agreement enumerating the purposes for which funds could be expended, the court found that direct payment of benefits as a self-insurer was not an enumerated purpose. Since the trustees could not expend funds for such an unenumerated purpose, the resolution was not a "question coming before the trustees for decision," and the court therefore held that an umpire could not be appointed.

The Second Circuit again addressed the umpire question in *Mahoney* v. *Fisher*, 277 F.2d 5 (2d Cir., 1960). The deadlock there was over whether the trust should pay a bill for expert advice from insurance brokers. The court held that an umpire should be appointed because the seeking and receiving of advice from insurance experts was within the

range of matters entrusted to the trustees by the collective bargaining parties.

In *Farmer* v. *Fisher*, 586 F.2d 1226 (8th Cir., 1978) the Eighth Circuit held that an umpire should not be appointed to break a deadlock over whether the trustees should sue employers for contributions not made to the fund during a strike. The court reasoned that the dispute arose from the collective bargaining agreement rather than from the trust declaration, that the dispute was not a matter of day-to-day management of the funds, and that it was not therefore included in "administration" of trust funds.

The Tenth Circuit in *Ader* v. *Hughes*, 570 F.2d 303 (10th Cir., 1978) held that an umpire should not be appointed to break a deadlock between trustees over the adoption of two amendments to a trust agreement. One amendment proposed a change in the manner in which one of the employer trustees would be appointed. The other amendment would have required an employer to continue making contributions to the health benefit trust fund after expiration of the collective bargaining agreement. The court agreed that the word "administration" in 29 USC § 186 (c)(5) refers only to day-to-day trust fund management. The court held that "administration" does not include decisions to amend or not amend a Section 302 (c)(5) trust agreement.

In contrast to the above cases, the Sixth Circuit in this case held in effect that "administration" is a broad term encompassing virtually any matter related to the trust fund regardless of whether the trustees have been given by the bargaining parties full and binding authority to act with respect to the matter. The Sixth Circuit should have given "administration" a narrow definition rather than a broad one. The cases mentioned above were all decided before *NLRB* v. *Amax Coal Co.*, 453 U.S. 322 (1981). The *Amax* case should have led the Sixth Circuit to conclude in this case that "administration" must be defined narrowly to preclude trustee involvement in collective bargaining matters over which the collective bargaining parties retained ultimate control.

Federal labor policy does not require mandatory arbitration of collective bargaining disputes, but deadlocks among trustees over "administration" are subject to mandatory resolution by an umpire. Criteria are needed for determining where to draw the line between collective bargaining disputes and disputes over "administration."

The term "administration" is not defined by statute. The Supreme Court has not construed it. The petitioners contend that the term must be limited and construed to mean only those ministerial acts over which the trustees have been given complete and final authority by the collective bargaining parties. Such a construction would be consistent with *United Mine Workers* v. *Robinson*, 455 U.S. 562 (1982). The court there held that a change in eligibility requirements which was thoroughly negotiated between the collective bargaining parties and expressed in a collective bargaining agreement was not within the fiduciary duty obligations of the trustees. Excluded from "administration" should be those acts and issues which fall within the definition of collective bargaining expressed in Section 8 (d) of the LMRA, 29 U.S.C. § 158 (d) which provides in pertinent part as follows:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Only by construing "administration" in such a manner can the distinction set forth in *Amax* between trustees and bargaining representatives be maintained. Using such a construction, workable criteria can be formulated for deciding

whether an umpire should be appointed. The criteria should be (1) whether the deadlock is over a collective bargaining issue and (2) if not, whether the bargaining parties have given the trustees complete binding authority to decide the question.

If under the first criterion the issue is a bargaining issue, it is not appropriate for the trustees and not subject to umpire resolution. This is so because, according to *Amax*, trustees are not collective bargaining representatives and are not supposed to be negotiating collective bargaining terms and conditions. Trustees do not create the terms and conditions, they merely carry out the terms that have been negotiated and agreed upon by the collective bargaining representatives. If trustees are permitted to change terms negotiated between management and union, and an umpire can be appointed to break an impasse on the proposed change, the statutory structure of the employer-union-employee relationship is altered and eroded.

In the event that the deadlocked issue is not a bargaining issue under the first criterion, the second criterion should be applied. The District Court would then presumably examine the language of the various agreements involved to determine if the parties agreed to submit the deadlocked issue to an umpire. If the court found that the issue was within the exclusive power of the trustees and that they had agreed to settle it through an umpire rather than through some other means of arbitration, an umpire should be appointed.

II. The Decisions Below Are Incorrect And Contrary To Federal Labor Policy And To Principles Established By The Supreme Court.

This case illustrates the need for the two part test suggested above. The District Court and the Sixth Circuit ignored the first part of the test. They did not perceive the need to determine whether the impasse was over a collective bargaining issue or a matter of trust administration. They

looked only at the contractual language describing the authority of the trustees. Instead of first considering the nature of the deadlocked resolution, the courts below went straight to the broad provisions describing the power of the trustees and concluded that the resolution was within the trustees authority and subject to umpire resolution. The petitioners believe that the lower courts cannot do this because of *Amax*. Even if the trust agreement specifically gave the trustees in this case power to amend the collective bargaining agreement, the District Court would be wrong in appointing an umpire. By appointing an umpire the court would be saying that trustees can negotiate collective bargaining agreements. If trustees can negotiate collective bargaining terms, they must, in so doing, act as agents or representatives of the union or employer. The court said in *Amax*, however, that trustees cannot be collective bargaining representatives when they are acting as trustees. The lower courts in this case, by holding that the trustees had the authority to propose the resolution and by holding that an umpire can rule on the resolution, sanctioned what this Court *disapproved* in *Amax*.

It is true, as the District Court pointed out, that the Trust Agreement authorized the trustees to draft a plan and make necessary changes in it from time to time. It is also true that the Standards themselves provide that the JAC may amend the Standards by a two-thirds vote. To be effective, however, an amendment to the Standards must be approved by the union and the employer association. The District Court reasoned that the proposed resolution was an amendment to the Standards, that the trustees had authority to amend the Standards, and that, therefore, a deadlock over adoption of the amendments was an affair of the trust subject to the umpire clause.

The petitioners argued that the resolution proposed not only an amendment to the Standards but also a new interpretation and construction of specific terms of the collective bargaining agreement representing a radical departure from previous interpretation and practices. The collective bar-

gaining agreement provides that the JAC may make only such rules and regulations as to not conflict with the specific terms of the collective bargaining agreement. Who decides whether a proposed rule conflicts with the collective bargaining agreement as it has been interpreted and applied? The District Judge believed that he could decide it since he found that the "resolution is consistent with the collective bargaining agreement." The District Judge was wrong for several reasons.

First, the resolution is not consistent with the collective bargaining agreement. The collective bargaining agreement says that the JAC shall grant one apprentice for each four journeymen regularly employed throughout the year. The employer association and the union agreed when they signed the Standards that "journeymen" meant members of Local 141. The Standards are expressly recognized as part of the collective bargaining agreement (Appendix C, Article XI, Section 1). The resolution, on the other hand, expands "journeymen" to include travelers. The effect of the resolution would be an increase in the number of apprentices on the job unrelated to the number of Local 141 journeymen. This is significant because the employer association and the union have agreed in the Standards that apprentices are to be trained and supervised only by members of Local 141, that the specific members of Local 141 who assume the responsibility for training apprentices will be identified to the JAC by the employer in writing, and that the union will discipline any member of Local 141 who is remiss in his apprentice training responsibilities (Exhibit E, Section Five (4), (6), Section Six (4)). If the resolution were adopted and in effect during a year when an employer had a large construction project requiring a large number of travelers to supplement its work force due to a shortage of available Local 141 journeymen, not only would there be more apprentices on the employer's job, but there would also be more apprentices for each of the employer's Local 141 employees to train. The

resolution would therefore increase the burden and responsibility of the members of Local 141.

The proposed resolution also changes the meaning of the language "regularly employed throughout the year" expressed in Article XI, Section 3 of the collective bargaining agreement (Exhibit C). The word "year" according to the resolution means the *past* year. From the standards as they exist, it is apparent that the parties had understood "year" to mean the *present* year. Section Three (1) of the Standards states that the JAC shall determine the need for new apprentices with due regard to *present and future* needs of the trade (Exhibit E, Section Three (1)). The JAC must use its best influence to keep the apprentices continuously employed (Exhibit E, Section Three (5)(A)). The employer is required to provide such information as is necessary to assure the JAC that apprentices will be reasonably continuously employed (Exhibit E, Section Five (3)). The "on-the-job training" is the main component of the apprentices education (Exhibit E, Section Three (7) and (8)). From the Standards which were signed by the collective bargaining parties and recognized by them as part of the collective bargaining agreement, it is clear that the term "regularly employed throughout the year" relates to the present and future and not to the past. If the resolution were adopted, employers would be entitled to apprentices based on past employment figures and not on the number of Local men presently employed who will continue to be employed long enough to train new apprentices.

Second, the District Judge disregarded the agreement of the parties concerning the method of resolving disputes over the meaning and interpretation of the collective bargaining agreement. The meaning of "journeymen" and "regularly employed throughout the year" was agreed upon by the collective bargaining parties when they approved the standards and signed them. After their approval, the standards were expressly recognized as part of the collective bargaining agreement (Exhibit C, Article XI, Section 1). The parties

bargained over and agreed upon Article X of the collective bargaining agreement as the method for settling disputes over contract interpretation. The parties did not state in any of the agreements that the Standards shall be recognized as part of the trust agreement. While the Standards "supplement" and "clarify" both the collective bargaining agreement and the trust agreement, the parties agreed to recognize them as part of only one of the agreements – the collective bargaining agreement. The question here is which dispute procedure applies. The answer must be, contrary to the opinions below, the collective bargaining grievance procedure.

The answer depends upon what the parties agreed to. It is not reasonable to conclude that the parties intended to commit all deadlocked issues to an umpire's decision. The courts below found that the resolution was "an affair of the trust'" which the parties relegated to the umpire procedure because the trustees had the authority to draft the original Standards and amend them as necessary. The courts were wrong in assuming that an "affair of the trust" was any item over which the trustees had *some* authority. "Affair of the trust" must be construed to mean those items committed to the *sole* discretion of the trustees such as interpretation of the trust agreement and *administration* of the approved Standards. When so construed, the deadlock-breaking decision of an umpire would settle the dispute. Under the view of the lower courts, however, changes in the Standards or the Trust Agreement could also go to the umpire even though the umpire's decision would not be effective unless both the union and employer's association voted to accept it. Under the court's construction, the umpire procedure would be an expensive waste of time on amendment matters where the bargaining parties have opposing views. After an umpire's decision on a proposed and contested amendment, the amendment would either die or be resurrected as a bargaining issue for the next collective bargaining agreement or treated as a grievance under the collective bargaining agreement.

The courts below should have recognized that the parties agreed to resolve some disputes by umpire and others through the bargaining process. The courts wrongly assumed that the parties agreed to submit the proposed resolution which certainly represented a substantial change in the Standards to the umpire whose decision will not be final and binding in any event.

Third, the resolution is an attempt by the employer trustees to obtain mid-term concessions without bargaining. The resolution proposes a substantial retreat from an interpretation of the ratio which has been won and held by the union. The employer trustees insist on the retreat but the union trustees have the right and the duty to uphold the Standards as they are written. If the employer trustees want to press for more apprentices on the job by insisting that travelers be included in the ratio formula, they should refer their desire to the employer association. The employer trustees can't negotiate for additional apprentices and the union trustees can't make compromises. The trustees can't renegotiate the contribution rate nor change the four-to-one ratio nor make any other trade-offs which might result in a solution acceptable to all. The proper place for the proposed resolution is the bargaining table at contract negotiation time.

Fourth, the District Judge was wrong in concluding that the trustees and hence an umpire have the authority to amend the Standards in order to reconcile them with the collective bargaining agreement. If the courts' logic were sound, then the employer trustees could propose a resolution to make the apprentice wage scale set forth in the Standards consistent with the scale set out in the collective bargaining agreement. The scale is higher in the Standards. If the trustees deadlocked on such a proposal, would the union trustees have to submit the concession request to an umpire? If so, wouldn't the employer trustees be arguing that they can't afford the higher wage scale? Wouldn't the union trustees be arguing for maintenance of the higher scale? Isn't it the statutory duty of the union, not the trustees, to

bargain for wages of the employees it must represent even if the employees are apprentices rather than journeymen?

Surely the collective bargaining parties did not intend to let an umpire decide how much apprentices should be paid. Wages of apprentices are, however, mentioned in the same sentence of the collective bargaining agreement which describes the duties of the JAC. Petitioners contend that the collective bargaining parties intended to retain control over the ratio just as they retain control over apprentice wages.

CONCLUSION

The statute says that a trustee deadlock over "administration" must be subject to umpire resolution. To decide whether trustees petitioning for appointment of an umpire are entitled to such appointment, a court has to decide whether the deadlock is over "administration." The term is not defined by statute and criteria are needed to assist the courts in drawing a line between what is administration and what is not. In this case, the District Judge believed that "administration" was co-extensive with the trustees' authority. If the trustees had *any* authority to deal with the issue, a deadlock on the issue triggered the umpire clause in the District Court's view. The petitioners contend that the term "administration" must be given a more limited meaning. It must mean only those discretionary matters over which the collective bargaining parties have given the trustees full power to make binding decisions. It cannot include collective bargaining matters over which the collective bargaining parties have retained ultimate control.

The District Court and the Sixth Circuit were wrong in holding that the proposed resolution was a matter of administration subject to the umpire clause. The resolution proposes significant changes in a negotiated term of the collective bargaining agreement. The term and its interpretation were the result of bargaining. To change the term

or its interpretation, bargaining is required. The term was born of negotiation and agreement between labor and management and cannot be changed by trustees or an umpire. The collective bargaining parties by their agreements retained control over this term and other terms affecting the bargaining relationship. They did not commit this term to the total discretion of the trustees.

If this decision is permitted to stand, the distinction between trustees and bargaining representatives established in *Amax* would be obliterated. If this decision stands, then trustees can circumvent the bargaining ban of *Amax* by wrapping bargaining issues in the cloak of "administration." Petitioners respectfully urge the court to review this case and provide guidance to the lower courts and to the thousands of trustees, unions and employers who struggle in the no man's land between ERISA and the Taft-Hartley Act.

Respectfully submitted,

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APPENDIX A

No. 82-3098

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DAVID E. SANDMAN, JOHN E. McDONALD, STUART F. YOUNG, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING FUND,

Plaintiffs-Appellees,

v.

LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; PAUL ROESSLER, KEVIN CAHILL, LEE COSTELLO, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING TRUST FUND,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of Ohio, Western Division

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Decided and Filed April 29, 1983

Before: EDWARDS, Chief Circuit Judge, ENGEL, Circuit Judge and WEICK, Senior Circuit Judge.

PER CURIAM. This appeal is from an order of the district court granting summary judgment in favor of plaintiffs-appellees, appointing an impartial umpire thereby resolving a dead-

lock existing between Management and Union trustees over the appointment of apprentices, said six trustees comprising the Board of Trustees of Sheet Metal Workers Local 141 Apprentice Training Trust Fund (Fund).

This Fund was provided for in the collective bargaining agreement between the Sheet Metal Contractors Association (Employers or Management) and Local Union 141, Sheet Metal Workers International Association (Union). Pursuant to the collective bargaining agreement, a trust agreement was executed in 1967. Under the terms of the trust agreement, the Employers were to make specified payments to the Fund, which money was to be used to educate and train apprentices in accordance with the trust agreement. The basic thrust of the trust agreement was to increase minority group representation among apprentices so that eventually the minority population would comprise its proportionate share of journeymen laborers.

The trust agreement provided that in the event a deadlock developed among the trustees "on any of the affairs of this trust", an impartial umpire would be appointed to resolve the dispute. If the trustees could not agree on such an umpire, then any of the trustees could petition the federal district court to appoint such an umpire to decide the dispute. Furthermore, the agreement provided that its provisions "shall be liberally construed in order to promote and effectuate the establishment and operation of the Apprentice Training Program."

In 1974, the Joint Apprentice Committee executed a set of Sheet Metal Apprenticeship Standards in order to supplement and clarify the provisions of the agreement with respect to the Fund. These standards provided, inter alia:

> The employer agrees that the apprentice-journeymen ratia under these standards shall be no more than one (1) apprentice for each four (4) employed journeymen members of Local # 141.

This was similar to language in the collective bargaining agreement which stated:

> It is hereby agreed that the employer shall apply to the Joint Apprentice Committee and the Joint Apprentice Committee shall grant apprentices on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year.

It appears that over a number of years, at least since 1974, the Employers have attempted to secure an additional number of apprentices allowed under the formula. However, the Union has delayed or refused to cooperate, thus very few apprentices have been brought in under the program. Despit the Union's obstructionist activities, however, none of the trustees ever until now sought to have the deadlocks broken by an impartial umpire which option was provided for both by the trust agreement and by the Taft-Hartley Act, 29 U.S.C. § 186(c).

The present dispute arose when the three Employer trustees presented the following resolution:

> All applying employers shall be granted one apprentice for each block of 6,400 hours of work accumulated by any and all journeymen who worked for the applying employer in the twelve month period preceding the application of the employer. Included in that 6,400 hours shall be the work time of journeymen who are members of Local 141 or sister locals in the Sheet Metal Workers International such as travelers.

The three Employer trustees voted for the resolution, the three Union trustees voted against it. The Employer trustees alleged that since the issue was deadlocked, an impartial umpire should be selected to resolve the dispute. The Union trustees refused to participate in the selection of such a referee, so the Employer trustees filed with the federal district court for such relief. The court granted plaintiffs' motion for summary judgment and denied defendants' same motion. The defendants (Union Trustees) appeal.

The Union trustees argue that whatever prior disputes they may have had with plaintiffs or whatever deadlocks that may

have existed previously are not relevant to the current dispute. Since plaintiffs did not attempt to have an impartial umpire appointed to settle earlier disputes, those disputes cannot properly be considered by the district court now. But since the district court did consider the prior actions of the parties, that was error, the Union contends.

The Union argues that the Employer trustees' resolution was an attempt to change the ratio of apprentices to journeymen established by the specific terms of the collective bargaining agreement. Under the collective bargaining agreement the ratio was to be four journeymen to one apprentice. But the Union cites an example, where, under the Employer trustees' resolution, a one to one ratio could theoretically exist. This would be contrary to the collective bargaining agreement, the Union contends, and the trust is not permitted to so alter the basic agreement.

Consequently, it argues, the dispute over the resolution is not a dispute concerning "affairs of the trust", but rather it concerns affairs of the collective bargaining agreement itself. It claims the court erred when it characterized the resolution as "a motion to adopt a definition clarifying when an apprentice should be indentured". It contends that the resolution deals not with *when* a new group of apprentices should be taken into the program, but rather with how many apprentices an applying Employer may have allotted him. And it maintains, this is specifically covered in the collective bargaining agreement, and it is therefore not an issue for the trustees to decide.

Its final argument is that since the proposed resolution is not a proper issue for the trustees to decide, it likewise is an issue over which an impartial referee would have no authority.

Thus it contends the district court erred in granting summary judgment to plaintiffs.

Plaintiffs assert the district court properly considered defendants' prior history of trying to frustrate the purpose of the trust by using a variety of delaying tactics. Plaintiffs argue that it was proper because it was part of the court's evaluation of whether a deadlock existed (defendants contended there

was no deadlock) . . . . a necessary finding before the court could appoint an impartial arbitrator.

Next, plaintiffs maintain that the proposed resolution was not an effort to change the four journeymen to one apprentice ratio established in the collective bargaining agreement, but rather was an attempt to "clarify and implement that ratio, and to reconcile it with the ratio contained in the Standards". Plaintiffs contend that the trustees had argued over what language such as "regularly employed throughout the year" or "on the employer's payroll" meant. Thus, the proposed resolution was an effort to clarify this ambiguous language by specifying that the Employer was entitled to one apprentice for each 6,400 hours of work by the Employer's journeymen in the preceding 12 monthss. Plaintiffs say this does not and was not intended to change the specific provisions of the collective bargaining contract. Plaintiffs further argue that defendants' hypothetical example of where there would be one apprentice for one journeyman, is specious. This, plaintiffs say, is expressly prohibited by the Standards, and the Standards provide that "Nothing in these Standards shall be interpreted as being contrary to the present or subsequent bargaining agreement."

Finally, plaintiffs argue that the proposed resolution is an affair of the trust, and is therefore within the authority of the trustees, and that as a consequence, the district court did not err in appointing an umpire to settle the existing deadlock. This argument revolves around whether the resolution was an attempt to modify the collective bargaining agreement. Plaintiffs reassert their previous argument that it was an attempt to clarify, not modify the collective contract.

Plaintiffs contend that the district court acted properly and in accord with the trust agreement and the Taft-Hartley Act when it granted their motion for summary judgment ordering an umpire be appointed.

When the Union and Employer trustees had previously deadlocked over the number of apprentices the Employers were entitled to, the deadlock could have been settled by appoint-

ment of an impartial umpire. However, neither the Union nor the Employer trustees sought to break the earlier deadlocks with an umpire.

On the other hand, there does exist a current dispute or deadlock – that being over a current resolution put forward by the Employer trustees. We are of the opinion that the district court properly entertained this question. The key issue appears to be the scope of the trustees' authority.

Having reviewed the pleadings, affidavits and other submissions to the court, including language of the trust agreement that its provisions were to be liberally construed to effectuate the objectives of the Apprentice Training Program, the district court concluded that the resolution did not seek to modify the collective bargaining agreement, but rather only to "clarify the basis on which the 4-1 ratio shall be applied and to make the terms of the JAC Standards of the Trust Agreement. . . . consistent with the language of the Collective Bargaining Agreement. . . ."

We are of the opinion that District Judge Speigel gave careful consideration to the contentions of the parties and reached a correct decision and we affirm for the additional reasons set forth in his opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C-1-81-393

DAVID E. SANDMAN, TRUSTEE, ET AL
Plaintiffs,

vs.

LOCAL UNION NO. 141 SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, ET AL
Defendants.

MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Filed January 13, 1982)

SPEIGEL, J.:

This mater is before the Court for consideration of plaintiff's motion for summary judgment (doc. 8), defendant's motion for summary judgment (doc. 9) and plaintiff's reply memorandum (doc. 11). After reviewing the pleadings, the foregoing motions and memoranda and the affidavits and exhibits filed by the parties, the Court concludes that there is no genuine issue of material fact to be decided in this litigation, that summary judgment should be granted to the plaintiff, and

that defendant's motion for summary judgment should be denied, for the reasons hereinafter set forth.

This litigation concerns the issue of whether an impartial umpire should be appointed by the Court to resolve a dispute between the employer trustees and the union trustees who comprise the Board of Trustees of the Sheet Metal Workers Local 141 Apprentice Training Trust Fund (the Fund). The Fund was provided for by the Collective Bargaining Agreement between the Sheet Metal Contractors Association and other employers in the sheet metal industry in this area (Association) and Local Union 141 Sheet Metal Workers International Association (Union).

The Fund was created and governed by an agreement and declaration of trust executed July 14, 1967 between the Association and the Union (Agreement). Under the terms of the Agreement, the employers of the Association agreed to make specified payments to the Fund to be used for the purpose of educating and training apprentices in accordance with the provisions of the Agreement. The Fund is administered by six trustees, three appointed by the employers and three appointed by the Union. The issue over which they are in dispute is a resolution proposed by the employer trustees which was voted for by the three employer trustees and voted against by the three Union trustees. This resolution states:

> All applying employers shall be granted one apprentice for each block of 6,400 hours of work accumulated by any and all journeymen who worked for the applying employer in the twelve month period preceding the application of the employer. Included in that 6,400 hours shall be the work time of journeymen who are members of Local 141 or sister locals in the Sheet Metal Workers International such as travelers.

The employer trustees allege that since the vote was tied, a deadlock among the trustees existed with regard to the administration of the Fund. The Union Trustees refused to participate in the selection of an impartial umpire to resolve

this deadlock; thus, plaintiffs have turned to the Court for relief.

A Court is empowered to appoint an umpire to resolve a dispute among Board members who are trustees of the Union fund, such as the instant one, in the event the employer and the employee groups deadlock on the administration of such fund, there are no neutral persons empowered to break such deadlock, and the two groups fail to agree on an impartial umpire to decide such dispute within a reasonable length of time. 29 U.S.C. § 186(c) (5)(B). The Union trustees argue, however, that this Court should not appoint an umpire because no "deadlock" exists, the dispute among the trustees is not on the "affairs of the trust," and the disputed issue is one which, under the Collective Bargaining Agreement between the parties, must be submitted to the grievance procedures contained in that Agreement. Thus, resolution of these issues necessitates an examination of the documents by which the parties are governed and the history of the relations between the parties regarding the administration of the Trust Fund.

The pertinent articles of the Trust Fund agreement are as follows.

Article 3 states that the "purposes of the trust fund shall be to provide, pursuant to the program inaugurated by the trustees, a training and education program for apprentices . . .".

Article VI sets out the powers and duties of the trustees. Under Section 1(b) they are to formulate and administer a plan for the exclusive purposes of the training and education of apprentices, adopt such rules and regulations as are consistent with and necessary to the performance of their duties, and exercise such powers and duties as are consistent with and may be reasonably necessary to carry out the purposes of the plan. Section 1(c) allows the trustees to amend or change the plan so as to best effectuate its purposes, with copies forwarded to the Union and the employers for purposes of adequate publicity.

Article X of the Agreement provides that the trustees be members of the Joint Apprentice Committee. Section 2. Con-

currence of a majority of the trustees shall be required for any action taken at a meeting, and concurrence of all trustees is required for action taken without a meeting. Section 7. Section 8 of Article X states:

> In the event of a deadlock among the trustees on any of the affairs of this trust, an impartial umpire to decide the matter in dispute shall be appointed by consent of all of the trustees, and if the trustees have not selected an impartial umpire . . . any one or more of the trustees may petition [this court] for the appointment of an impartial referee or umpire to decide such dispute.

Article XIII of the Agreement states that the provisions of the Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the Apprentice Training Program. Section 2, Article XIII. Article XIV provides for amendment of the Agreement by the trustees so long as the amendment is approved by the Employers' Association and the Union.

On June 14, 1974, the Joint Apprentice Committee executed the Sheet Metal Apprenticeship Standards (Standards) as its plan to supplement and clarify the provision of the Agreement with regard to the Fund. The Standards required and received approval by the Union and the Employer Association. Full administration of the Standards was vested in the Joint Apprenticeship Committee (JAC), which was to be comprised of the six trustees who also served as trustees for the Trust Fund. Standards, Section 2. Under Section 3 (1) of the Standards, the JAC responsibility was to determine the need for new apprentices. Section 5 (2) of the Standards states that the "JAC may place apprentices with employers at the rate of one (1) apprentice for each four (4) members of Local # 141 on the employers' payroll." Section 9 provides:

> The employer agrees that the apprentice-journeymen ratio under these standards shall be no more than one (1) apprentice for each four (4) employed journeymen members of Local # 141.

Section 10 of the Standards goes on to state that if the 4-1 journeymen to apprentice ratio is decreased, the JAC may request the return of the apprentice.

Section 12 (D) of the Standards allows the JAC to establish such additional rules and regulations governing its administrative procedure as required, and (E) provides that nothing in the Standards shall in any way abridge the full autonomy of the JAC to supervise and administer its local program. Section 14 of the Standards allows their amendment at any time by a two-thirds vote by action of the JAC subject to approval by the Employer Association and the Union. Appendix A to the Standards consists of an affirmative action plan for the JAC.

The history of the JAC operations reflect an almost continual state of impasse between Union trustees and employer trustees on the number of apprentices which may be indentured under Section 9 of the Standards. Union trustees have repeatedly refused to approve the number of apprentices requested by the members of the Association and the employer trustees; likewise, employer trustees have refused to approve the number of apprentices requested by the Union trustees, which is usually considerably less than the number requested by the employer trustee.

As early as 1973, Union and employer trustees deadlocked over the number of new apprentices to be appointed. Use of the Collective Bargaining Agreement grievance machinery was resorted to to solve the impasse. Although the trustees, as members of the JAC, were found to be in violation of the Union Agreement and were directed to indenture sufficient apprentices to honor all valid requests as per the Trust Agreement and the Union agreement, the trustees remained unable to do so because of apparent disagreements over the interpretation of which requests were valid under the ratio imposed by Sections 5 and 9 of the Standards. Between 1975 and 1977, only three apprentices were indentured. The number of apprentices to be indentured each year has remained as issue of contention with frequent deadlocks between Union and em-

ployer trustees of the JAC up to the present time. Interestingly enough, neither side has ever resorted to the impartial umpire provisions of the Agreement, made mandatory by 28 U.S.C. § 186(c) (5)(B) to resolve these deadlocks until this time. However, the result has been that the Trust does not effectively function according to its purpose.

Finally, at a meeting of the JAC on March 16, 1981, the employer trustees proposed the contested resolution, by means of a motion, to adopt a definition clarifying when an apprentice should be indentured. The vote on the resolution deadlocked.

One inescapable fact emerges from our examination of the affidavits, agreements, minutes, correspondence, and other material submitted by the parties, and that is that the purpose of the establishment of the Joint Apprenticeship Training Program for Local # 141 has been frustrated since December, 1973. An examination of the Sheet Metal Workers Apprenticeship Standards discloses that it is part and parcel of the Affirmative Action Plan for the Cincinnati Area Sheet Metal Workers. In order for the Affirmative Action Plan to meet its goals, it is necessary for the Apprenticeship Training Program to function properly, as generally one can only become a journeyman sheet metal worker after having completed serving as an apprentice.

In view of the Court's evaluation of the situation, it finds little merit in defendant's objection to the appointment of an impartial umpire to resolve this dispute on the basis that no deadlock exists. Rather, the evidence shows the parties are deadlocked on plaintiff's motion to clarify the language of Sections 5 and 9, just as they had been deadlocked on previous occasions regarding the number of apprentices which may be indentured. This is just one more example in a continuum which illustrates the impasse which the trustees have encountered in the appointment of apprentice classes and the indenturing of apprentices which has made administration of the trust ineffectual.

Defendants' second contention is that the dispute among the

trustees is not "on any of the affairs of this trust" as required by Article X, Section 8 of the Agreement. To be a dispute over an "affair of the trust", the issue must be one which the trustees have the authority to decide under the trust agreemet. *Mahoney* v. *Fisher*, 277 F.2d 5 (2nd Cir. 1960); *Singleton* v. *Abramson*, 336 F. Supp. 754 (S.D. New York 1971).

Defendants argue that adoption of the resolution is beyond the scope of the trustees' authority under the Trust Agreement since it constitutes an amendment to the Collective Bargaining Agreement and the Trust Standards.

Article XI, Section 3 of the Collective Bargaining Agreement executed June 1, 1980 by the Association and the Union states that:

> It is hereby agreed that the employer shall apply to the Joint Apprentice Committee and the Joint Apprentice Committee shall grant apprentices on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year.

This language parallels that of Section 5(2) of the Trust Standards as well as Section 9 with the exception that the Collective Bargaining Agreement does not require, as both Sections do, that the "regularly employed journeymen" be members of Local # 141.

Under the language of the proposed resolution, one apprentice may be indentured to an employer for each block of 6,400 hours. accumulated by the work of journeymen who have worked for the applying employer over a twelve-month period. Roughly translated, such figures equal your journeymen, each working 1,200 hours per year or thirty, forty-hour weeks out of a possible fifty-two. This resolution is consistent with the Collective Bargaining Agreement in that it does not require that the journeymen only be members of Local # 141. Thus, rather than seeking to amend the Collective Bargaining Agreement, the resolution, in the Court's opinion, attempts to clarify the basis on which the 4-1 ratio shall be applied and to make the terms of the JAC Standards of the Trust Agreement, specifi-

cally Sections 5 and 9, consistent with the language of the Collective Bargaining Agreement, by deleting the requirement of journeyman membership in Local # 141. Such an amendment of the JAC Standards of the Trust Agreement is clearly within the trustee's power. Article VI, Section 1(c) of the Agreement. Article VI allows the trustees to amend or change the Standards so as to best effectuate the purpose of the Trust. Indeed, Article VI of the Agreement vests the sole discretion of administering the Trust in a workable manner, including the adoption of such rules and regulations as are necessary to the performance of their duties, with the trustees. Clearly amendment of the Standards to conform to the Collective Bargaining Agreement and proposing regulations by which those Standards, such as the 4-1 ratio, may be implemented, are central to the effective administration of those Standards and the Trust. Accordingly the Court has no difficulty finding that the proposed resolution is within the trustee's power and concerns the affairs of the Trust. This case is distinguishable from *Ader* v. *Hughes*, 570 F.2d 303 (10th Cir. 1978) cited by defendants, in that in *Ader*, when the Trust Agreement was prepared, the Union trustees agreed that umpires could not decide matters in connection with the interpretation of any Collective Bargaining Agreement. In the instant case, no such factual situation is present. Rather, the trustees are empowered to amend the Standards, Article VI, Section 1(c) of the Agreement, and the Agreement itself if approved by the Union and the Association. Article XIII of the Agreement. And, if such action were not initiated by the trustees where the Fund is concerned, there would be no one else to do so. Thus, we are dealing with a matter left open to the discretion of the trustees by the terms of the Trust Agreement. *See Ader* v. *Hughes*, 570 F.2d at 308. Further, it is a matter which has been in dispute and resulted in blocking effective implementation of the most basic purpose of the Trust; *i.e.*, the trustees ability to administer the Trust according to its purpose which is to indenture apprentices for training. Accordingly, the Court finds that this is a proper situation to appoint an impartial

umpire to resolve the dispute. 29 U.S.C. § 186(c); *Singleton* v. *Abramson*, 336 F.Supp. 754 (S.D. New York 1971).

Accordingly, plaintiff's motion for summary judgment is granted, and defendant's motion for summary judgment is denied. The Court will grant the parties fourteen (14) days to submit to the Court a joint list of suggested individuals who they agree would be appropriate for consideration to be appointed the impartial umpire in this case.

SO ORDERED.

/s/ S. ARTHUR SPIEGEL
S. Arthur Spiegel
United States District Judge

APPENDIX C

SHEET METAL WORKERS AGREEMENT

Sheet Metal, Roofing, Ventilating and Air Conditioning Contracting Divisions of the Construction Industry

Agreement entered into this First day of June, 1980, by and between Sheet Metal Contractors' Association of Greater Cinti. Inc. (Name of Contractor or Contractor's Association) hereinafter referred to as the Employer, and Local Union No. 141 of Sheet Metal Workers' International Association, hereinafter referred to as the Union for Hamilton, Highland, Brown and Clermont Counties in Ohio; Boone, Kenton and Campbell Counties in Kentucky; Dearborn and Ohio Counties in Indiana.

ARTICLE I

SECTION 1. This agreement covers the rates of pay, and conditions of employment of all employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

ARTICLE II

SECTION 1. No Employer shall subcontract or assign any of the work described herein which is to be performed at a job site to any contractor, subcontractor or other person or party who fails to agree in writing to comply with the conditions of employment contained herein including, without limitations, those relating to union security, rates of pay and working conditions, hiring and other matters covered hereby for the duration of the project.

SECTION 2. Subject to other applicable provisions of this Agreement, the Employer agrees that when subcontracting for prefabrication of materials covered herein, such prefabrication shall be subcontracted to fabricators who pay their employees engaged in such fabrication not less than the prevailing wage for comparable sheet metal fabrication, as established under provisions of this Agreement.

ARTICLE III

SECTION 1. The Employer agrees that none but journeymen and apprentice sheet metal workers shall be employed on any work described in Article I. And, further, for the purpose of proving jurisdiction, agrees to provide the Union with written evidence of assignment on the employer's letterhead for certain specified items of work to be performed at a jobsite prior to commencement of work at the site. List of such specific items, which may be revised from time to time, as agreed to by and between SMACNA and SMWIA, shall be provided to the employer.

ARTICLE IV

SECTION 1. The Union agrees to furnish upon request by the Employer, duly qualified journeyman and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in

the manner and under the conditions specified in this Agreement.

ARTICLE V

SECTION 1. The Employer agrees to require membership in the Union, as a condition of continued employment of all employees performing any of the work specified in Article I of this Agreement, within eight (8) days following the beginning of such employment or the effective date of this Agreement, whichever is the later, provided the Employer has reasonable ground for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

SECTION 2. If during the term of this Agreement the Labor-Management Relations Act of 1947 shall be amended by Congress in such manner as to reduce the time within which an employee may be required to acquire union membership, such reduced time limit shall became immediately effective instead of and without regard to the time limit specified in Section 1 of this Article.

SECTION 3. The provisions of this Article shall be deemed to be of no force and effect in any state, to the extent to which the making or enforcement of such provision is contrary to law. In any state where the making and enforcement of such provision is lawful only after compliance with certain conditions precedent, this Article shall be deemed to take effect as to involved employees immediately upon compliance with such conditions.

ARTICLE VI

SECTION 1. The regular working day shall consist of eight (8) hours labor in the shop or on the job between eight (8) a.m. and five (5) p.m. and the regular working week shall consist of five (5) consecutive eight (8) hour days labor in the shop or on the job, beginning with Monday and ending with Friday of each week. All full time or part time labor performed during such hours shall be recognized as regular working hours and paid for at the regular hourly rate. Except as otherwise provided pursuant to Sections 4, 5 and 6 of this Article, all work performed outside the regular working hours and performed during the regular work week, shall be at Double (2) times the regular rate.

Employees shall be at the shop or project site at scheduled starting time each day and shall remain until quitting time.

SECTION 2. New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day or days locally observed as such, and Saturday and Sunday shall be recognized as holidays. All work performed on holidays in the shop or on new construction shall be paid as follows: two (2) times the regular rate of pay.

SECTION 3. It is agreed that all work performed outside of regular working hours during the regular work week and on holidays shall be performed only upon notification by the Employer to the local union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible.

SECTION 4. Shift work and the pay and conditions therefor shall be only as provided in written addendum attached to this Agreement. Energy conservation-Retrofit work performed outside the regular work day in occupied buildings shall be performed under shift work conditions to be established by the local parties or by the National Joint Adjustment Board on the request of either party, if not locally provided.

SECTION 5. All overtime work performed behind industrial plant gates, including public utilities, shall be paid at one and one-half (1½) times the prevailing rates instead of double time, up to two (2) hours Monday through Friday and up to eight (8) hours on Saturday without restricting starting time on Saturday. This provision will not extend to shop fabrication or new construction.

New construction shall be defined as: A new building and/or an expansion to an existing building in the form of additional floor and/or floors vertically or an addition to increase floor space horizontally.

SECTION 6. The first hour of any overtime performed on Monday through Friday shall be paid at the time and one-half (1½) rate in lieu of double time.

ARTICLE VII

SECTION 1. When employed in a shop or on a job within the limits of *(See Addendum No. 5)* employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said limits from home to shop or job at starting time and from shop or job to home at quitting time, and the Employer shall provide, or pay, for all necessary additional transportation during working hours.

SECTION 2. When employed outside of the limits specified in Section 1 of this Article, and within the jurisdiction of the Union, employees shall provide transportation for themselves which will assure their arrival at the limits specified in Section 1 of this Article at regular starting time, and the Employer shall provide or pay for all additional transportation for such jobs, including transportation from such job back to the limits specified in Section 1 of this Article which will assure arrival at such limits at quitting time. As an alternative to the foregoing method, travel expense may be paid by a zone or other method of payment. If this alternative method

is used, it will be provided in a written addendum attached hereto.

ARTICLE VIII

SECTION 1. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be *(See Addendum 12)* except as hereinafter specified in Section 2 of this Article.

SECTION 2. On all work specified in Article I of this Agreement, fabricated and/or assembled by journeyman sheet metal workers and/or apprentices within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other Local Union affiliated with Sheet Metal Workers' International Association, whose established wage scale is higher than the wage scale specified in this Agreement, the higher wage scale of the job site Union shall be paid to the journeyman employed on such work in the home shop or sent to the job site.

SECTION 3. The provisions of Section 2 of this Article, Section 2 of Article II and Section 1 of Article III shall not be applicable to the manufacture for sale to the trade or purchase of the following items:

1. Ventilators
2. Louvers
3. Automatic and fire dampers
4. Radiator and air conditioning unit enclosures
5. Fabricated pipe and fittings for residential installations and light commercial work as defined in the locality
6. Mixing (attenuation) boxes
7. Plastic skylights
8. Air diffusers, grilles, registers
9. Sound attenuators
10. Chutes

11. Double-wall panel plenums
12. Angle rings

SECTION 4. The provisions of Section 2 of this Article shall not be applicable to AIR POLLUTION CONTROL SYSTEMS fabricated for the purpose of removing air pollutants, excluding air conditioning, heating and ventilating systems. In addition, the provisions of Section 2 of this Article will not be applicable to the manufacture of spiral pipe and fittings for high pressure systems.

SECTION 5. Except as provided in Sections 2 and 6 of this Article, the Employee agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of this Agreement shall receive the wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

SECTION 6. When the Employer has any work specified in Article I of this Agreement to be performed outside of the area covered by another Agreement and within the area covered by another Agreement with another union affiliated with the Sheet Metal Workers' International Association, and qualified sheet metal workers are available in such area, he may send no more than two (2) sheet metal workers per job into such area to perform any work which the Employer deems necessary, both of whom shall be from the employer's home jurisdiction. All additional sheet metal workers shall come from the area in which the work is to be performed. Journeymen sheet metal workers covered by this Agreement who are sent outside of the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article but in no case less than the established wage scale of the local Agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of that local

Agreement. If employees are sent into an area where there is no local Agreement of the Sheet Metal Workers' International Association covering the area then the minimum conditions of the home local union shall apply.

SECTION 7. In applying the provisions of Sections 2, 5 and 6 of this Article VIII, the term "wage scale" shall include the value of all applicable hourly contractual benefits in addition to the hourly wage rate provided in said Sections.

SECTION 8. Welfare benefit contributions shall not be duplicated.

SECTION 9. Wages at the established rates specified herein shall be paid weekly in cash or by check in the shop or on the job at or before quitting time on pay day of each week, and no more than three (3) days' pay will be withheld. However, employees when discharged, shall be paid in full.

SECTION 10. Journeymen sheet metal workers who report for work by direction of the Employer and are not placed at work, shall be entitled to two (2) hours' pay at the established rate. This provision, however, shall not apply under conditions over which the Employer has no control.

SECTION 11. Each Employer covered by this Agreement shall employ at least one (1) journeyman sheet metal worker who is not a member of the firm on all work specified in Article I of this Agreement.

SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments,

however, shall be used for any other purpose except as expressly specified above.

(b). The employer shall pay the Sheet Metal and Air Conditioning Contractors National Industry Fund of the United States (IFUS) three cents ($.03) per hour worked on and after the effective date of this agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 8224 Old Courthouse Rd., Vienna, Virginia 22180, or for the purpose of transmittal through Sheet Metal Contractors' Association of Greater Cinti., Inc. 801 Linn St., Suite 602, Cincinnati, Ohio 45202, (Name of local remitting organization).

(c). The IFUS shall submit to the Sheet Metal Workers' International Association not less often than semi-annually written reports describing accurately and in reasonable detail, the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the IFUS shall include in such written report a financial statement attested by a certified public accountant containing its balance sheet and detailed statement of annual receipts and disbursements. Further specific detailed information in regard to IFUS activities or its receipts and/or expenditures shall be furnished to the Sheet Metal Workers' International Association upon written request.

(d). Grievances concerning use of IFUS funds for purposes prohibited under Section 12(a) or for violations of other subsections of this Section may be processed by the Sheet Metal Workers' International Association directly to the National Joint Adjustment Board under the provisions of Article X of this Agreement. In the event such proceeding results in a deadlock, either party may, upon ten (10) days notice to the other party, submit the issue to final and binding arbitration. The Arbitrator shall be selected by the Co-Chairmen of the National Joint Adjustment Board. The Arbitrator shall be

authorized to impose any remedial order he deems appropriate for violation of this Section, including termination of the employer's obligation to contribute to the IFUS. The authority of the Arbitrator is expressly limited to a determination of a deadlocked issue under this Section, Section 12. Article VIII), and no other.

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as expressly specified above.

(b). The Employer shall pay to the Cincinnati Area Sheet Metal Industry Fund, 801 Linn St., Suite 602, Cincinnati, Ohio 45203, (Name and address of local industry fund) (hereinafter referred to as the local industry fund), six cents ($.06) per hour for each hour worked on or after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

(c). The fund shall furnish to the Business Manager of the Union not less often than semi-annually written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the Fund shall include in such written report, a statement attested by a certified public accountant and containing its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to Fund activities or its receipts and/or disbursements shall be furnished to the Business Manager of the Union upon his written request.

(d). The Union shall furnish to the Chapter Manager of the Sheet Metal Contractors' Association of Greater Cincinnati, Inc. not less often than semi-annually written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the Union shall include in such written report, a statement attested by a certified public accountant and contain its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to Union activities or its receipts and/or disbursements shall be furnished to the Chapter Manager of the Sheet Metal Contractors' Association upon his written request.

(e). Grievances concerning use of local industry fund monies to which an employer shall contribute for purpose prohibited under Section 13(a) or for violations of other subsections of this Section shall be handled under the provision of Article X of this Agreement. The National Joint Adjustment Board shall be authorized to impose any remedial order for violation of this Section, including termination of the employer's obligation to contribute to the local industry fund.

SECTION 14. The employers will contribute to the National Training Fund for the Sheet Metal and Air Conditioning Industry four cents ($.04) per hour for each hour worked on and after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the twentieth (20th) day of the succeeding month and shall be remitted to the office of the National Training Fund as designated by the Trustees of the Fund, or for purposes of collection and transmittal through the Sheet Metal Contractors' Association of Greater Cincinnati, Inc., 801 Linn St., Suite 602, Cincinnati, Ohio 45203. The parties agree to be bound by the Agreement and Declaration of Trust establishing said Fund and amendments thereto as may be made from time to time and hereby designate as their representatives on the Board of Trustees such Trustees as are

named, together with any successors who may be appointed pursuant to said agreement.

ARTICLE X

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized representative of the Union, if possible. An Employer may have the local Association present to act as his representative.

SECTION 2. Grievances not settled as provided in Section 1 of this Article may be appealed by either party to the Local Joint Adjustment Board having jurisdiction over the parties and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no case more than fourteeen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties, to render a final and binding determination, except as provided in Sections 3 and 5 of this Article. The Board shall consist of an equal number of representatives of the Union and of the local Employers Association and both sides shall cast an equal number of votes at each meeting. The local Employers' Association, on its own initiative, may submit grievances for determination by the Board as provided in this Section.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in Section 1 of this Articlee, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in Section 2 of this Article, because of a deadlock, or failure of such Board to act, may be appealed jointly or by either party to a Panel consisting on one (1) representative appointed by the General President of Sheet Metal Workers' International Association and one (1) repre-

sentative appointed by the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. Appeals on behalf of employees shall be mailed to the General Secretary-Treasurer of the Sheet Metal Workers' International Association and those on behalf of an employer mailed to the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Joint appeals shall be mailed to the Secretaries of both Associations. Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in Section 2 of this Article. Such Panel shall meet promptly, but in no event more than fourteen (14) calendar days following a receipt of such appeal, unless such time is extended by mutual agreement of the Panel members. Except in case of deadlock, the decision of the Panel shall be final and binding.

Notwithstanding the provisions of Paragraph 1 of this Section, a contractor who was not a party to the labor agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board, including a unanimous decision, and request a Panel hearing as set forth in Section 3 of this Article, providing such appeal is approved by both the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. and by the General President of Sheet Metal Workers' International Association.

SECTION 4. Grievances not settled as provided in Section 3 of this Article may be appealed jointly or by either party to the National Joint Adjustment Board, as established by the Sheet Metal Workers International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submissions shall be made and decisions rendered under such procedures as may be prescribed by such Board, from time to time, and mutually approved by the parties creating it. Copies of the procedures shall be available from, and submissions of grievances may be made to, either the General

Secretary-Treasurer of Sheet Metal Workers' International Association or the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submissions on appeal to the National Joint Adjustment Board shall be made within thirty (30) days after termination of the procedures prescribed in Section 3 of this Article.

SECTION 5. A Local Joint Adjustment Board, Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party as they deem necessary and proper, including awards of damages or other compensation and, if it is believed warranted, to direct that the involved agreement and any other agreement or agreements between the employer and any other local union affiliated with the Sheet Metal Workers' International Association be cancelled, provided, however, that any decision of a Local Joint Adjustment Board or Panel directing cancellation of an agreement or agreements shall be automatically reviewed by the National Joint Adjustment Board and such a cancellation shall not be effective unless the order is affirmed by an order from the National Board.

SECTION 6. In the event any party fails or refuses to comply with any decision of a Local Joint Adjustment Board or Panel, without appeal, or any decision of the National Joint Adjustment Board, within thirty (30) days after notice thereof, a Local Joint Adjustment Board, Panel, or any party to the dispute may in addition to any other legal remedies which may be available to the parties, request the National Joint Adjustment Board to cancel the involved agreement and any other agreements between the involved employer and other local unions affiliated with Sheet Metal Workers' International Association. Unless otherwise decided by unanimous vote, the National Joint Adjustment Board shall cancel such agreementss if it finds the involved party to be in non-compliance with the decision in question. Requests for the Board's service shall be made in the same manner, and in the same form as other appeals to the National Joint Adjustment Board

and the procedure followed shall be the same except that any intermediate step or steps shall be omitted and the request made directly to the National Joint Adjustment Board.

SECTION 7. Failure to exercise the right of appeal at any step thereof within the time limit provided therefor shall void any right of appeal applicable to the facts and remedies of the grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the proceduress for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a). Should the negotiations for renewal of this agreement become deadlocked in the opinion of the Local Union or of the Local Contractors' Association, or both, notice to that effect shall be given to the office of the General President of Sheet Metal Workers' International Association and the national office of the Sheet Metal & Air Conditioning Contractors' National Association, Inc. If the General President of Sheet Metal Workers' International Association and the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the General President of Sheet Metal Workers' International Association and the national office of Sheet Metal

and Air Conditioning Contractors' National Association, Inc. shall be promptly so notified without recommendation from the panel representatives. Should the General President of Sheet Metal Workers' International Association or the chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible. After the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b). Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits will also be exchanged between the parties in advance of the hearing.

(c). The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the General President of SMWIA and the Chairman of the National Labor Committee of SMACNA shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone

notification.

(d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

ARTICLE XI

SECTION 1. All duly qualified apprentices shall be under the supervision and control of a Joint Apprentice Committee composed of six (6) members, three (3) of whom shall be selected by the Employer, and three (3) by the Union. Said Joint Apprentice Committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement, to govern eligibility, registration, education, transfer, wages, hours, working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade. Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this Agreement.

SECTION 2. The Joint Apprentice Committee designated herein shall serve for the life of this Agreement, except that vacancies in said Joint Apprentice Committee caused by resignation or otherwise, may be filled by either party thereto, and it is hereby mutually agreed by both parties hereto, that they will individually and collectively cooperate to the extent that duly qualified apprentices be given every opportunity to secure proper technical and practical education experience in the trade, under the supervision of the Joint Apprentice Committee.

SECTION 3. It is hereby agreed that the Employer shall apply to the Joint Apprenticeship Committee and the Joint Apprenticeship Committee shall grant apprentices on the basis of one (1) apprentice for each four (4) journeymen regularly

employed throughout the year. Provided, however, that the ratio for employers engaged in solar, retrofit or energy-related work shall be one (1) to three (3).

SECTION 4. All applicants for apprenticeship shall be between the ages of eighteen (18) and twenty-five (25) years of age and each apprentice shall serve an apprenticship of four (4) years and such apprentice shall not be put in charge of work on any job and shall work under the supervision of a journeyman until apprenticeship terms have been completed and they have qualified as journeymen.

SECTION 5. A graduated wage scale for apprentices shall be established and maintained on the following percentage basis of the established wage rate of journeymen sheet metal workers.

First year – First half 45% – Second half 50%
Second year – First half 55% – Second half 60%
Third year – First half 65% – Second half 70%
Fourth year – First half 75% – Second half 80%

ARTICLE XII

SECTION 1. This Agreement and Addenda Numbers 1 through 25 attached hereto shall become effective on the First day of June, 1980, and remain in full force and effect until the Thirty-first day of May, 1982, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party, except as modified by Section 8 of Article X.

SECTION 2. If, pursuant to federal or state law, any provision of this agreement shall be found by a court of competent jurisdiction to be void or unenforceable, all of the other provisions of this agreement shall remain in full force and effect.

SECTION 3. Notwithstanding any other provision of this Article, or any other Article of this Agreement, whenever an emendment to the Standard Form of Union Agreement shall be adopted by the National Joint Labor Relations Adjustment Committee, any party to this Agreement, upon the service of notice to all other parties hereto, shall have this Agreement reopened thirty (30) days thereafter, for the sole and only purpose of attempting to negotiate such amendment, or amendments into this Agreement for the duration of the term thereof. There shall be no strike or lockout over this issue.

In witness whereof, the parties hereto affix their signatures and seal this First day of June, 1980.

LOCAL UNION NO. 141, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

By: .....
Business Manager

SHEET METAL CONTRACTORS' ASSOCIATION OF GREATER CINCINNATI, INC.

By: .....
Chapter Manager

CONTRACTOR: .....
Name of Firm

By: .....
Representative

ADDENDA TO SHEET METAL WORKERS AGREEMENT FORM A-3-71

1. By permitting the inclusion of the Union's jurisdictional representatives and claims within this Contract, the Employer shall not be deemed to have assented thereto, nor denied the validity of such jurisdictional representations and claims, nor waived any of the Employer's rights by the inclusion of such representations and claims.

2. Any controversy pertaining to Article I of the Standard Form of Agreement shall be submitted to the Joint Adjustment Board for arbitration.

3. Notwithstanding the provisions of Article IV of this Agreement, the Union shall furnish within 72 hours, upon request by the Employer, duly qualified journeymen and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in the Agreement. In the event the Union cannot furnish duly qualified journeymen and apprentice sheet metal workers, the Employer shall have the right to hire from other sources.

4. Jurisdictional Decisions: The work to be performed under this Agreement will be that of SHEET METAL WORKERS as determined by the National Labor Relations Board or the National Joint Board for the Settlement of Jurisdictional Disputes.

Both parties to this Agreement agree to be bound by the terms and provisions of the Agreement, Effective May 1, 1948, as amended by Agreement, effective April 13, 1956, creating the National Joint Board for the Settlement of Jurisdictional Disputes. In particular, both parties agree to Article V, Section 5, of the Agreement, which states:

> "Any decision or interpretation by the Joint Board shall immediately be accepted and complied with by all parties signatory to this agreement."

5. Travel Time and Travel Expenses: Neither Travel Time nor Travel Expenses shall be allowed for employees on jobs located within a twenty mile radius of the Hamilton County Court House, Cincinnati, Ohio, except when employees are moved from shop to job, or job to job, during regular working hours. On jobs located outside of the no Travel Time or Expense zone as set forth above, employees shall be paid the following rates per day to cover both travel time and travel expense. The focal point for establishment of the radius miles listed below is the Hamilton County Court House, Cincinnati, Ohio.

0 to 20 mile zone	Free
20 to 25 mile zone	$ 5.65
25 to 28 mile zone	$ 7.95
28 to 32 mile zone	$10.15
32 to 36 mile zone	$12.35
36 to 40 mile zone	$14.55
40 to 44 mile zone	$16.75
44 to 50 mile zone	$19.00

When employees are sent outside of the fifty (50) mile radius of the Hamilton County Court House, and it is mutually agreed (employer and employee) that they shall remain overnight, they shall receive not less than a minimum of twenty-three dollars ($23.00) per day for living expenses, plus actual transportation costs going to and from such construction projects. When traveling, employees shall receive the straight hourly rate per hour only for those hours traveled during the regular working hours and work week, as defined in Article VI. Traveling done outside of the regular work week shall be paid at the straight hourly rate per hour for the time traveling, but not to exceed eight (8) hours per day.

Employees choosing to drive to and from the job site, it is their responsibility to be at the job site at starting time and remain until quitting time.

If directed by the employer to leave the job site and return, then the above paragraph two (2) shall again apply.

When employees are sent from shop to job or moved from

job to job during the regular working hours they shall be paid not less than twenty (20¢) per mile (for each mile) traveled.

6. All assignments for apprentices by the JAC shall be made under stipulations as set forth in the "Standards" approved by Local No. 141 and the "Association."

A graduated wage scale for apprentices shall be established and maintained per the Standard Form of Union Agreement.

7. The Employer agrees to provide adequate protection for safeguarding tools at the job site. The Employer shall be responsible for the loss (by theft) of employee's tools due to reported forced entry. The employee shall furnish a list of his tools to the foreman on the job site or the company at the start of his employment.

8. Any necessary protective or safety equipment, as required by law, shall be provided by the contractor.

9. Steward Clause: The Union shall have the right to appoint a steward to the job or shop from among the men on the job or in the shop where it deems necessary. The steward shall not be laid off or discharged for performing his duties as a steward.

The steward shall be the second last man to be laid-off or transferred from the job, provided he can do available work.

The employer agrees to notify the union one (1) working day prior to a steward's being laid off.

10. Shift work.

a. Shop — When a shop is manned at full capaacity, it will be permissible to work shifts. Management and the Union will determine the capacity of the shop so involved. This clause applies to shop work only. Shift work may be worked Monday through Friday and shall be at least five (5) consecutive work days duration.

Scheduling of shift work shops: The first shift shall be at the eight (8) hour straight time pay between the hours of 7:30 a.m. to 4:00 p.m. The second shift shall work eight (8) hours

work for ten (10) hours' pay between the hours of 4:00 p.m. to 12:30 a.m. The third shift shall work seven (7) hours for ten (10) hours' pay between the hours of 12:30 a.m. and 7:30 a.m.

b. Erection – Occupied Buildings:

Shift work erection will apply only to job which cannot be done during regular working hours. This clause shall not apply to new buildings, complete remodel of buildings nor new additions to existing buildings.

Shift work may be worked Monday through Friday on jobs that are at least two (2) consecutive work days duration.

Scheduling of Shift Work: The first shift shall work eight (8) hours work for eight (8) hours' pay between the hours of 7:30 a.m. to 4:00 p.m. The second shift shall work eight (8) hours' work for ten (10) hour's pay between the hours of 4:00 p.m. to 12:30 a.m. The third shift shall work seven (7) hours work for ten (10) hours' pay between the hours of 12:30 a.m. to 7:30 a.m. It is understood that all or any shift may be worked as governed by job conditions and/or requirements. All hours worked by an individual in excess of one shift to be paid at two (2) times the regular rate of pay. Nothing in this paragraph shall be construed to limit the right of the Employer to schedule second or third shifts without having worked the earlier shifts.

c. Erection and/or Air Balancing – Occupied or Partially Occupied Buildings:

Air conditioning work which cannot be done during regular working hours and consisting of not more than four (4) days duration may be done in a shift time basis. Employees shall receive eight (8) hours pay for seven (7) hours work.

d. Erection – New Construction:

Shift work may be performed at the option of the Employer, but when performed it must continue for a period of not less than five (5) consecutive work days. Saturday and Sunday if

worked, can be used for establishing the five (5) day minimum shift period, but shall be paid at two times the regular rate of pay. The work week for straight time shift purposes shall be considered to start at 12:01 a.m. Monday and end at 12:30 a.m. Saturday.

Scheduling of Shift Work: The first shift work eight (8) hours work for eight (8) hour pay between the hours of 7:30 a.m. to 4:00 p.m. The second shift shall work eight (8) hours work for ten (10) hours pay between the hours of 4:00 p.m. to 12:30 a.m. The third shift shall work seven (7) hours work for ten (10) hours pay between the hours of 12:30 a.m. to 7:30 a.m. It is understood that all or any shift may be worked as governed by job conditions and/or requirements. All hours worked by an individual in excess of one (1) shift, to be two (2) times the regular rate of pay.

11. An employee shall have the right to refuse to cross a picket line or refuse to work where a labor dispute exists, as provided in Section 7 and Section 8 of the Labor-Management Relations Act, as amended, if pertinent, and neither the Employer nor the Union shall cause any disciplinary action whatsoever against such employee for exercising, or not exercising such right.

12. Wages and Fringes:

a. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be as follows: except as specifieed in Section 2 of Article VIII;

Effective June 1, 1980.....15.34 per hour
Effective June 1, 1981.....16.94 per hour

Whenever a wage increase becomes due during the life of this agreement, the increase may be allocated to any fund or funds in the agreement in any amounts the employees so desire.

Notwithstanding the provisions of Article VIII, Section 9, the Employer and Union agree that no more than three (3)

days pay will be withheld. However, employees when discharged, shall be paid in full.

b. Pension Fund: The Employer agrees to contribute for each hour worked by each employee subject to the terms of this Agreement during the term of the Agreement to Sheet Metal Local 141 Pension Fund.

Effective June 1, 1978 .....$.74 per hour – Local Pension
Effective June 1, 1979 .....$.12 per hour – National Pension

This fund shall be administered by a Board of Trustees consisting of six (6) Trustees, three (3) of whom shall be designated by the Sheet Metal Contractors' Association and three (3) of whom shall be designated by Sheet Metal Local 141. The Trustees shall administer this Fund in accordance with the terms and provisions of the Agreement and Declaration of Trust dates July 13, 1961, the terms and provisions of which are herein incorporated by reference.

c. Health and Welfare Fund: The Employer agrees to contribute for each hour worked by each employee subject to the terms of this Agreement during the term of the Agreement to Sheet Metal Local Union 141 Health and Welfare Fund:

Effective July 1, 1980.....$.75 per hour

This Fund shall be administered by a Board of Trustees consisting of six (6) Trustees, three (3) of whom shall be designated by Sheet Metal Contractors' Association and three (3) of whom shall be designated by Sheet Metal Local Union 141. The Trustees shall administer this Fund in accordance with the terms and provisions of the Agreement and Declaration of Trust dated June 1, 1965, the terms and provisions of which are herein incorporated by reference.

d. Apprenticeship Training Fund: The Employer agrees to contribute for each hour worked by each employee subject to the terms of this Agreement during the term of the Agreement to Sheet Metal Local Union 141 Apprenticeship Training Fund:

Effective July 1, 1980.....$0.04 per hour

This Fund shall be administered by a Board of Trustees consisting of six (6) Trustees, three (3) of whom shall be designated by the Sheet Metal Contractors' Association and three (3) of whom shall be designated by Sheet Metal Local Union 141. The Trustees shall administer this Fund in accordance with the terms and provisions of the Agreement and Declaration of Trust dated July 14, 1967, the terms and provisions of which are herein incorporated by reference.

e. Vacation Plan: The Employer agrees to withohold from each employee's applicable wages for each hour worked by employees subject to the terms of this Agreement for deposit into Sheet Metal Local Union 141 Trusted Vacation Plan:

Effective June 1, 1978.....$1.00 per hour

This Fund shall be administered by a Board of Trustees consisting of six (6) Trustees, three (3) of whom shall be designated by Sheet Metal Contractors' Association and three (3) of whom shall be designated by Sheet Metal Local Union 141. The Trustees shall administer this Fund in accordance with the terms and provisions of the Agreement and Declaration of Trust dated June 1, 1964, the terms and provisions of which are herein incorporated by reference.

f. Local 141 Supplemental Unemployment Trust Fund (SUB): The Employer agrees to contribute 3% as defined below for each hour worked by each employee subject to the terms of this agreement during the term of the agreement to Local 141 Supplemental Unemployment Trust Fund.

This Payroll Tax Exempt Trust amounts to basic journeyman scale, plus health and welfare, plus pension times three percent (3%) multiplier which equals the contribution in cents per hour as set out below:

Effective June 1, 1980.....$0.43 per hour

SUB will remain at 43¢ per hour. Three percent (3%) will remain in contract and may be instituted if needed, by notification to contractual parties.

This Fund shall be administered by a Board of Trustees consisting of six (6) Trustees, three (3) of whom shall be designated by Sheet Metal Contractors' Association and three (3) of whom shall be designated by Sheet Metal Local Union 141. The Trustees shall administer this Fund in accordance with the terms and provisions of the Agreement and Declaration of Trust dated August 5, 1974, the terms and provisions of which are herein incorporated by reference.

Local 141 Dues Check-Off, Building Fund and PAL Donation:

g. Local 141 Dues Check-Off: The Employer agrees to withhold 1-1/4% dues check-off plus assessment as defined below from each employee's applicable wages for each hour worked by employees subject to the terms of this Agreement for deposit with Local 141 SMWLA as Union dues in addition to the members' regular dues paid directly by the member to Local 141.

The Employer must have an Employee's signed authorization card in the employer's file prior to making above dues deduction. (Note: Employer must furnish copy of authorization to Local 141 office).

The Employer agrees to withhold 10¢ per hour, in addition to the 1.25% (as of June 1, 1979), for Local 141 Building Fund Assessment, until the 1.25% exceeds 29¢ per hour.

The Employer also agrees to withhold an additional 2¢ per hour as a PAL employee donation. For those not signing a PAL authorization card this 2¢ per hour will be applied to the Local 141 Building Fund Assessment.

Dues check-off amounts to journeymen base wage plus health and welfare, plus SUB and pensions, times one and one-fourth percent (1-1/4%) multiplier which equals the deduction in cents per hour after payroll taxes as set forth below:

July 1, 1980.....$0.31 per hour
June 1, 1981.....$0.31 per hour

h. Local Industry Fund: The Employer agrees to contribute for each hour worked by each employee, subject to the terms

of this Agreement during the term of the Agreement to "Cincinnati Area Sheet Metal Industry Fund:"

Effective June 1, 1978.....$0.06 per hour

This Local Industry Fund shall be solely administered by the Sheet Metal Contractors' Association of Greater Cincinnati, Inc. through the established Trust Agreement under standards that will effectively protect and promote the best interests of the Industry, including but not limited to meeting the expenses of said Association, the expenses of conducting public relations, as applied to the Sheet Metal Industry and expenses connected with the Promotions of Stability of Relations between labor and management and such other purposes as are consistent with this program and no other.

13. Fringe and/or Benefit Payments:

The payments to the funds covered by the terms of this agreement:

1. Local and National Pension Funds
2. Health and Welfare Fund
3. Apprenticeship Training Fund.
4. Local 141 SUB Trust
5. Local 141 Dues Check-Off
6. Local 141 Vacation Check-Off
7. Cincinnati Area Industry Fund
8. National Industry Fund United States
9. National Training Fund

shall be made by each Contractor/Employer on or before the fifteenth (15th) day of each month covering the required payments for the proceeding month. Contributions not received by or postmarked later than the twentieth (20th) day of the month, to allow for weekends and legal banking holidays shall be assessed ten percent (10%) liquidated damages on the unpaid balance.

In addition to the assessment of liquidated damages, in the event that any action or proceedings against any participating Employer is necessary to enforce the payment of any contribu-

tions to the Fringe Benefit Fund in the timely manner, as outlined about, the Trustees or the Union shall have the right to sue and recover on behalf of the Funds, the amount of the unpaid contributions, if any, plus the assessed liquidated damages, any and all court costs and reasonable attorney's fees.

14. It is a condition of this contract that the Employer is at liberty to employ or reject any job applicant, however, the Employers do agree to hire only qualified journeymen or registered apprentices. The Employer may recall any particular journeymen previously employed by contractors that are or were previously parties to this Agreement.

The Employer further agrees to notify the Union of opportunities for new employment with such Employer and to give the Union an opportunity to refer qualified applicants for such employment.

In the event of reduction of the work force on a project, non-area resident employees will be first to be laid off by the Employer, except a non-area Employer may retain two non-area men.

15. When an employee is laid off he shall receive evidence as to why his employment was terminated, and this shall be in writing.

16. The Employer shall carry Unemployment Compensation, Federal Old Age Benefits, and Workmen's Compensation and shall furnish the Union with evidence of same.

17. Foremen: Working foremen and general foremen (also working) from Local 141 shall be required as per the following schedule:

Men Employed	Foremen	General Foremen
0- 4	0	0
5-11	1	0
12-17	2	0
18-19	3	0
20-23	3	1
24-29	4	1
30-35	5	1
36-41	6	1

Effective June 1, 1975 – Foreman Rates

Foreman.....$ .50 per hour above Journeyman Scale
General Foreman....$1.00 per hour above Journeyman Scale

The appointment of Foremen is the responsibility of the Employer.

18. All payroll check stubs shall show the total hours worked.

19. All state income taxes sholl be paid to the state where the employee resides.

20. There shall be no restrictions on tools provided they are approved by the Industrial Commission of Ohio.

21. The Employer and the Union agree that they will not discriminate against any employee or applicant for employment nor in the referral of applicants for employment because of race, color, creed, national origin or age.

22. Union Contractor: Before the Union will enter into an Agreement with any Employer, the Employer shall:

a) Notify the Union of their intention to open and operate a Union Sheet Metal Shop.

b) Have an established permanent business address.

c) Have sufficient tools and equipment to fabricate and erect sheet metal work.

23. Downtown Parking: Where no parking is available on job sites and when paid parking only is available, the maximum rates will be paid:

Effective July 1, 1980.....$2.00 per day maximum
Effective June 1, 1981.....$2.25 per day maximum

Receipt must be presented by the employee to the Employer.

24. The Union shall notify the Sheet Metal Contractors' Association of Greater Cincinnati, Inc. of all signatory Contractors to the collective bargaining agreement and the Contractors' Association will notify the Union of all members of the Contractors' Association.

25. Changes in Agreement: in case either party to this Agreement wishes to change the Agreement, at least ninety

(90) days notice, in writing, shall be given to the other party prior to the expiration date. This Agreement shall continue in effect unless such notice is given.

In the event the above notice is given, and in the event an agreement on the proposed changes has not been reached at the expiration date of this Agreement, then this Agreement shall remain in effect until such time as negotiations are completed and a new agreement is in effect.

In witness whereof, the parties hereto affix their signatures and seal this 31st day of May 1980.

LOCAL UNION NO. 141 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

By: .....
Business Manager

SHEET METAL CONTRACTORS' ASSOCIATION OF GREATER CINCINNATI, INC.

By: .....
Chapter Manager

CONTRACTOR: .....
Name of Firm

By: .....
Representative

WAGES & FRINGE BENEFITS

Effective Dates	6-1-81	6-1-81
Base Wage	$15.34	$16.94
Fund No. 1 Dues Check-Off, Building P.A.L. (Deducted from base wages)	-.31	To be Allo
Fund No. 2 Vacation Fund (Deducted from base wages)	-1.00	

EMPLOYERS CONTRIBUTIONS ABOVE BASE WAGES (NON-TAXABLE)

Fund No. 3 Supplemental Unemployment Benefits	.43
Fund No. 4 Health & Welfare Fund	.75
Fund No. 5 Local Union 141 Pension Fund	.74
Fund No. 6 Local Union 141 Apprenticeship Fund	.04
Sheet Metal Workers National Pension Fund	.12
Fund No. 7 Cincinnati Industry Fund	.06
Fund No. 8 National Industry Fund	.03
Fund No. 9 National Training Fund	.04
	$17.55

APPENDIX D

SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING TRUST FUND

This Agreement and Declaration of Trust made and entered into this 14th day of July, 1967, by and between Local Union No. 141 Sheet Metal Workers' International Association (herein called the "Union") and Sheet Metal Contractors' Association, Division of Allied Industries, an unincorporated association, presently maintaining an office at Cincinnati, Ohio, (herein called the "Association") and various other employers who are signatory hereto (hereinafter collectively called "Employers").

WITNESSETH:

WHEREAS, the Union has executed a collective bargaining agreement with the Association, and has also entered into collective bargaining agreement with individual employers who are not members of said Association which among other things provide for the establishment and continuance of an apprentice educational trust fund whereunder the Employers agree to make certain specified payments to Trustees of said Fund; and

WHEREAS, similar provisions for such apprentice educational program may be renewed in collective bargaining agreements negotiated from time to time in the future; and

WHEREAS, the Union, the Association, and the Employers desire to establish this trust whereby the monies paid on account of apprentice education will be held in a separate trust fund known as Sheet Metal Workers No. 141 Apprentice Training Fund, to be amended in accordance with the provisions of this Agreement and Declaration of Trust;

NOW, THEREFORE, in consideration of the mutual promises of the parties, this trust is hereby created, and it is mutually declared, understood and agreed as follows:

ARTICLE I

DEFINITION

Section 1. The term "Employer" as used herein shall mean each employer who has presently in force, or who hereafter executes a collective bargaining agreement or addenda thereto with the Union providing for contributions (as hereinafter defined) to the Apprenticeship Trust Fund.

Section 2. The term "Employees" as used herein shall mean all members of the Union, and apprentice sheet metal workers performing work covered by the aforesaid collective bargaining agreements.

Section 3. The term "Apprenticeship Training Trust Fund" as used herein shall mean all contributions to this fund received by the Trustees under collective bargaining agreements and any additional contributions thereto that may hereafter be agreed upon by the parties under the said collective bargaining agreement between these parties or between the Union and any other parties together with all income and all other funds (as herein defined) received by the Trustees for the uses and purposes set forth in this Trust Agreement. For the purposes of this agreement, the terms Apprentice Educational Trust Fund, Educational Trust Fund, and Trust Fund shall be considered interchangeable.

Section 4. The term "Fund" or "Funds" as used herein shall mean all cash and other property or securities or interest in property held by the Trustees.

Section 5. The term "Trustees" as used herein shall mean the Trustees whose acceptance of said Trust is acknowledged by their signatures hereto and any successor Trustees designated in the manner provided herein.

Section 6. The term "Apprenticeship Training Trust Plan" as used herein shall include a method for the making of regular contributions to the Trustees, and the plans and procedure whereby the Trustees administer a program for the

training and education of apprentice sheet metal workers, all in accord with such rules and regulations as they may adopt and from time to time amend or change.

ARTICLE II

NAME

There shall be established a Trust Fund to be known as the Sheet Metal Workers Local No. 141 Apprentice Training Trust Fund.

ARTICLE III

PURPOSES

The purposes of the Trust Fund shall be to provide, pursuant to the program inaugurated by the Trustees, a training and educational program for apprentices and, in the future discretion of the Trustees, sheet metal workers in the territorial jurisdiction of the Union.

ARTICLE IV

APPROVAL OF GOVERNMENTAL AGENCIES

This Trust shall be administered in cooperation with all federal agencies interested or having authority over this subject matter. Any required submission of this program for the approval of any such agency or which may be in the best interests of the Fund shall be done by the Trustees.

ARTICLE V

CONTRIBUTIONS TO THE APPRENTICE TRAINING TRUST FUND

Section 1. The contributions shall be made pursuant to the terms of the collective bargaining agreements in accordance with the rules and regulations of the Trustees, and shall be paid to the Trustees monthly or at such regular intervals as the Trustees shall direct.

Section 2. The Trustees may compel and enforce the payment of the contributions in any manner which they may deem proper; and the Trustees may make such additional rules and regulations to facilities and enforce the collection and payment thereof as they may deem appropriate.

Section 3. The failure of an Employer to pay the contributions required hereunder within fifteen (15) days after the date due shall be a violation of the collective bargaining agreement between the said Employer and the Union as well as a violation of the Employer's obligations hereunder. Nonpayment by an Employer of any contributions when due shall not relieve any other Employer from his obligation to make payments. In addition to any other remedies to which the parties may be entitled, an Employer in default for fifteen (15) days shall be obligated to pay all expenses of collection that may have been incurred by the Trustees.

Section 4. Each Employer shall promptly furnish to the Trustees on demand any and all wage records relating to his employees which the Trustees shall require in writing. Each Employer shall also render to the Trustees with the payment of such contribution or at such other regular intervals as the Trustees may request, written reports as to the wages paid to and hours worked by his employees and the contributions due or payable to the Apprenticeship Educational Fund pursuant to the collective bargaining agreements, as the Trustees may require.

Section 5. The Trustees, or their authorized representatives, may examine the pertinent payroll books and records of each Employer whenever such examination may be deemed necessary or advisable by the Trustees in connection with the proper administration of the Apprenticeship Training Trust Fund.

Section 6. Collective Contributions.

The Trustees, in their names as Trustees and/or in the name of the Secretary/Treasurer of the Board of Trustees, or

the Administrator appointed by the Trustees shall have the power to demand, collect, receive and hold Employer contributions and may take such steps, including the institution and prosecution of or the intervention in any proceedings at law, in equity or in bankruptcy, as may be necessary or desirable to accomplish the collection of such Employer's contributions. If the contributions required of an Employer participant of this Fund are not made within fifteen (15) days from the date of demand by the Trustees, the Trustees after notice to the Employer participant shall have the right to terminate the Employer's participation in the Fund without release from any prior incurred debt.

ARTICLE VI

POWERS AND DUTIES OF THE TRUSTEES – EXPENSES AND FEES

Section 1. The Trustee shall, among other things:

(a) Accept and receive all contributions and requirements, and hold, invest, and manage the same as a part of this Trust Fund for the uses and purposes thereof.

(b) Formulate and administer a plan for the exclusive purposes of the training and education of apprentices, adopt such uniform rules and regulations as are consistent with and necessary to the performance of their duties as prescribed herein, and exercise such powers and duties as are consistent with and may be reasonably necessary to carry out the purposes of said plan.

(c) Make such amendments or changes to said plan from time to time as the Trustees consider will best effectuate the purposes of said plan. A copy of the rules and regulations voted upon by the Trustees and approved, together with changes from time to time, shall be forwarded to the Union and to the Association so that adequate information and publicity may be had.

(d) Invest and reinvest the assets of the Fund as the Trustees deem appropriate in such securities as are legal

under the laws of the State of Ohio, provided, however, that the Trustees use the same degree of prudence as they ordinarily would in connection with their business or with their official union funds.

(e) Pay out of the Apprentice Training Trust Fund all proper claims duly committed, including taxes.

(f) Designate depositaries for the Trust Fund and arrange for details of disbursing the Trust Fund providing that withdrawals or disbursements from the Trust Fund shall be made only upon the joint signature of two Trustees, one of whom shall be a Union Trustee and one of whom shall be an Employer Trustee.

Section 2. The Trustees shall have and maintain an office in the City of Cincinnati, Ohio, which shall be deemed the situs of the Apprentice Training Trust Fund. The Trustees may from time to time change the location of said office, but no change shall be effective until notice thereof shall have been given to the Union, the Association and the Employers.

Section 3. Notices given to the Trustees, the Union, Association, or any Employer hereunder shall, unless otherwise specified, be sufficient if in writing and delivered to, or sent by postpaid first class mail, or prepaid telegram. Except as herein otherwise provided, distribution or delivery of any statement or document required hereunder to be made to the Trustees, Association, Union or Employers shall be sufficient if delivered in person or if sent by postpaid first-class mail.

Section 4. In addition to any other rights, powers, and prerogatives vested in them, the Trustees may:

(a) Hold from time to time any or all of the Trust Fund in cash, uninvested and non-productive of interest or other income.

(b) Lease or purchase such premises, materials, supplies and equipment, and employ and retain such legal counsel, investment counsel, administrative accounting, actuarial,

clerical, custodial and other assistants or employees as in their discretion the Trustees may deem necessary or appropriate. The Trustees may hire teachers or instructors or may pay tuition to an already existing school providing for such education and training. They may pay teachers salaries, pay for material, text books and similar cost items. They shall further provide such equipment and supplies as they deem necessary and advisable to operate a training school with the high standards required by the Bureau of Apprenticeship, U.S. Department of Labor.

The Trustees may be reimbursed for their reasonable expenses incurred in connection with the performance of their duties as Trustees, and the Chairman and Secretary of the Board of Trustees shall also be considered as employees of the Trust and compensated in amounts determined by the Trustees, the Trustees having presently determined to compensate the Chairman and the Secretary each by the payment of $500.00 per annum.

(c) Borrow money from any and all types of persons, companies or institutions upon such terms and conditions as the Trustees may deem desirable and for the sums so borrowed or advanced, the Trustees may issue promissory notes or other evidence of indebtedness as Trustees, and secure the repayment thereof by the pledge of any securities or other property in their possession as Trustees.

(d) Authorize by resolution anyone or more of the Trustees to execute any notice or other instrument in writing and all persons, partnerships, corporations, or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Apprentice Training Trust Fund and the Trustees.

(e) Do all other acts and take any and all other action, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

ARTICLE VII

ACCOUNTS, RECORDS AND AUDITING THEREOF

Section 1. All income, and any and all monies, securities, and properties of any kind at any time received or held by the Trustees hereunder shall be held for the uses and purposes hereof.

Section 2. The Trustees shall keep true and accurate books of account and records of all their transactions, which shall be open to the inspection of each of the Trustees at all times, and which shall be audited annually by a certified public accountant selected by the Trustees. A condensed statement of such audits shall be available at all times for inspection by the Union, the Association, the Employers and Employees at the principal office of the Apprentice Training Trust Fund. Said audit shall contain a summary of the assets and liabilities of the plan and resume of the operation for the preceding year, together with such other data as the Trustees request.

ARTICLE VIII

CLAIMS AND INDIVIDUAL RIGHTS

No employee, nor any Employer, nor anyone claiming through either, shall have the right to receive any part of any contribution to this Fund whether it be from Employer or employee, except in the form of educational or training benefits established for apprentice sheet metal workers.

ARTICLE IX

INDEMNIFICATION AND PROTECTION OF TRUSTEES AND OTHER PERSONS

Section 1. Neither the Trustees nor any individual or successor Trustee shall be personally answerable or personally liable for any liabilities or debts of the Apprentice Training Trust Fund contracted by them as such Trustees, or for

the nonfulfillment of contracts, but the same shall be paid out of the Trust Fund and the Trust Fund is hereby charged with a first lien in favor of each of such Trustees for his security and indemnification for any amounts paid out by such Trustees for any such liability of any kind which the Trustees or any of them may incur hereunder; provided, however, that nothing herein shall exempt any Trustee from liability arising out of his own wilful misconduct, bad faith or gross negligence, or entitle such Trustee to indemnification for any amounts paid or incurred as a result thereof.

Section 2. The Trustees and each individual Trustee shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of the Trust, so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own wilful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) of any other Trustee, or of any employee, agent or attorney elected or appointed by or acting for the Trustees.

Section 3. The Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the trust and accuracy of the statements therein contained.

Section 4. The Trustees may seek judicial protection by any action or proceeding they may deem necessary to settle their accounts, or to obtain a judicial determination or declaratory judgment as to any question or construction of the Trust Agreement or instruction as to any action thereunder.

Section 5. The costs and expenses of engaging or retaining legal counsel, or of any action, suit or proceeding brought by or against the Trustees or any of them, shall be

paid from the Trust Fund, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Trustee was acting in bad faith or was grossly negligent in the performance of his duties hereunder.

Section 6. The Trustees shall not be bound by any notice, discretion, requisition, advice or request, unless and until it shall have been received by the Trustees at the principal place of business of the Apprentice Training Trust Fund.

Section 7. No person, partnership, corporation or association dealing with the Trustees shall be obliged to see to the application of any funds, securities or other property paid or delivered to the Trustees as a purchase price or otherwise or to see that the terms of the Trust have been complied with or be obliged to inquire into the authority of the Trustees or the necessity or expediency of any act of the Trustees and every instrument effected by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying thereon that (1) at the time of the delivery of said instrument the Trust was in full force and effect: (2) said instrument was effected in accordance with the terms and conditions of this Trust Agreement; and (3) the Trustees were duly authorized and empowered to execute such instrument.

ARTICLE X

APPOINTMENT, REMOVAL, RESIGNATION AND ADMINISTRATIVE FUNCTIONS OF TRUSTEES

Section 1. The initial Trustees of the Apprentice Training Trust fund shall be:

Phil Young, Jr.
Pat Klotte
W. H. MacDonald

for the Employers, and

Robert Angus
Harold Wilkins
Robert Carr

for the Union.

The above named Trustees, each for himself, accept their appointment as initial Trustees under this Agreement and consent to act as Trustees hereunder until they or their successors are designated as hereinafter provided in Section 2; and they declare and agree that they will receive and hold the Apprentice Training Trust Fund as Trustees under and by virtue of the terms, conditions and provisions of this Agreement and for the uses, purposes and trusts and with the powers and duties herein set forth.

Section 2. Coincident with the execution of this Agreement and Declaration of Trust, the Union and the Association mentioned herein have each designated in writing through their accredited officers the names of their respective Trustees who are the Trustees named heretofore. It is acknowledged that both the Union and the Association has the right to designate three Trustees each. Commencing as of July 5, 1967, the Trustees shall serve for the life of the collective bargaining agreement on which this Trust is based. The Trustees shall be the members of the Joint Apprentice Committee as such members are constituted from time to

time pursuant to the provisions of the current collective bargaining agreement. It is further provided that any Trustee may be removed from office at any time by the party designating him, with such removal to be evidenced in writing by the accredited officers of the Union or Association directing such removal, and delivered by mail to all of the Trustees. Any Trustee may also voluntarily resign by giving thirty days' notice of such resignation in writing to the other Trustees and to the Union and Association which designated him. Any replacement of Trustees shall be made by the accredited officers of the Union or Association which originally designated such Trustee through notice in writing to the other Trustees and to the Union or Association.

Section 3. In the event of the death, resignation or removal of a Trustee, the vacancy for the remaining term will be filled by the Union at a special meeting called for that purpose and by the Association by such procedure as it may elect to follow at the time such vacancy occurs. Notification of the successor Trustee shall be made in writing by the party designating such successor Trustee through its accredited officers and delivered to each of the other Trustees.

Section 4. During the months of June in each year, the Trustees shall elect from among the Trustees a Chairman and a Secretary of the Trustees to serve for a period of two (2) years. The Chairman and the Secretary shall not be both Employer Trustees or both Union Trustees and the Chairmanship and Secretaryship shall be alternated each term between an Employer Trustee and a Union Trustee, provided, however, that the Trustees by unanimous consent may continue the Chairman and the Secretary for more than two (2) years if they so desire. The authority of the Chairman and the Secretary shall continue until the election has been had the following term.

Section 5. The Union and Association may designate an equal number of alternate Trustees and designate alternates by number if there is more than one alternate Trustee. An alternate Trustee may participate in meetings, but shall have

the right to vote only in the absence of a regular Trustee who the alternate replaces in accordance with his numerical alternate designation.

Section 6. A meeting may be called at any time by the Chairman or by any two of the Trustees upon giving five (5) days' written notice to all the other Trustees.

Section 7. Any action by the Trustees may be taken either at a meeting or in writing without a meeting. Concurrence of a majority of the Trustees shall be required for any action taken at a meeting provided, however, that no action may be taken on any matter unless there is concurrence or at least two Union Trustees and two Employer Trustees. Concurrence of all the Trustees shall be required for action taken without a meeting.

Section 8. In the event of a deadlock among the Trustees on any of the affairs of this Trust, an impartial umpire to decide the matter in dispute shall be appointed by consent of all of the Trustees, and if the Trustees have not selected an impartial umpire who has signified his acceptance, within ten (10) days after the deadlock arose, anyone or more of the Trustees may petition the United States District Court, Southern District of Ohio, for the appointment of an impartial referee or umpire to decide such dispute.

Section 9. It is acknowledged that Employers bound by collective bargaining agreements with the Union and thereunder particularly with respect to the making of payments to this Fund under said collective bargaining agreements shall have fulfilled completely their obligations to this Trust upon making the payments in full required by said agreements.

ARTICLE XI

TERMINATION OF THE TRUST

In the event that the obligation of the Employer to make

Employer contributions shall terminate, or upon any liquidation of the Trust Estate, the Trustees shall continue to apply the Trust Estate to the purposes specified in Article III hereof and none other, and upon the disbursement of the entire Trust Estate this Trust shall terminate.

ARTICLE XII

BONDING

The Trustees and the employees of the Apprentice Training Trust Fund shall be bonded by a duly authorized surety company in at least the amount required by Federal Statute.

ARTICLE XIII

EXECUTION AND INTERPRETATION

Section 1. This Agreement and Declaration of Trust may be executed in one or more counterparts. The signature of a party or any counterpart shall be sufficient evidence of his execution hereof.

Section 2. The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the Apprentice Training Trust program herein contemplated. The Trustees shall have power to interpret, apply and construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Association, the Employers and the Employees.

Section 3. In the event that any provisions of this Trust Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not effect the remaining provisions of this Trust Agreement; and the provision or provisions held illegal or invalid shall be fully severable and the Trust Agreement shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

ARTICLE XIV
AMENDMENTS

The provisions of this Agreement and Declaration of Trust may be amended by an instrument in writing executed by the Trustees provided there are attached thereto a duly certified copy of a resolution approving such amendment adopted by the Union at a regular meeting or at a special meeting called for that purpose, and a duly certified copy of a resolution by the Association and attested by the Secretary of the Association duly approving such amendment, it being expressly understood and agreed that no amendment shall divert any of the Trust Estate then in the hands of the Trustees from the purposes of the Trust. The Trustee shall have no power to amending the provisions of this Plan regarding the amount of contributions thereto which shall be vested solely the commitments contained in the collective bargaining agreement between any or all participating Employers and the Union acting as the agent and binding thereby the rights and privileges of its members.

IN WITNESS WHEREOF, the Union and the Association named herein have caused this instrument to be duly executed on their behalf by their proper officers, who represented that they were duly authorized, and the Trustees named herein have hereunto set their hands thereby agreeing each individually to undertake the responsibilities therein imposed upon them as Trustees.

ARTICLE XV
NONPROFIT ORGANIZATION

This Trust is to be a nonprofit organization and no part of its net earnings shall enure to any private individual or member.

IN WITNESS WHEREOF, the Union and the Association named herein have caused this instrument to be duty executed on their behalf by their proper officers, who represented that they were duly authorized, and the Trustees named herein

have hereunto set their hands thereby agreeing each individually to undertake the responsibilities therein imposed upon them as Trustees.

Dated this 14th day of July, 1967.

LOCAL UNION NO. 141 SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

By: George Huesman/President
By: Ray Bickers/Bus. Representative

SHEET METAL CONTRACTORS' ASSOCIATION OF GR. CINCINNATI

By: George Prinz/President
By: Howard L. Knauf/Secretary

The undersigned, being the initial Trustees named by the parties to the foregoing Apprentice Training Trust Fund, do hereby acknowledge that they have read the foregoing Trust Agreement and they do hereby accept their appointments and responsibilities thereunder.

UNION TRUSTEES:

Robert Angus
Harold Wilkin
Robert Carr

EMPLOYER TRUSTEES:

Walter H. MacDonald
Philip Young, Jr.
Pat Klotte

ARTICLE XV

ADDENDA

IN WITNESS WHEREOF, the Union and the Association named herein have caused this instrument to be duly executed on their behalf by their proper officers, who represented that they were duly authorized, and the Trustees named herein have hereunto set their hands thereby agreeing each individually to undertake the responsibilities therein imposed upon them as Trustees.

Dated this 18th day of June 1973.

LOCAL UNION NO. 141 SHEET METAL
WORKERS' INTERNATIONAL ASSOCIATION

By: /s/ PAUL J. ROESSLER
President — Paul J. Roessler

By: /s/ JOHN D. BUTLER
Business Rep. — John D. Butler

SHEET METAL CONTRACTORS
ASSOCIATION OF GR. CINCINNATI

By: /s/ LEON L. KUEMPEL
President — Leon L. Kuempel

By: /s/ ARTHUR W. DANFORD
Chapter Mgr.—Arthur W. Danford

Therefore, the undersigned, being the current Trustees named by the parties to the foregoing Apprentice Training Trust Fund, do hereby acknowledge that they have read the foregoing Trust Agreement and they do hereby accept their appointments and responsibilities thereunder.

UNION TRUSTEES:

/s/ PAUL J. ROESSLER
Paul J. Roessler
/s/ RICHARD SCOTT
Richard Scott
/s/ LEE COSTELLO
Lee Costello

EMPLOYER TRUSTEES:

/s/ WILLIAM J. ALBRECHT
William J. Albrecht
/s/ DAVID SANDMAN
David Sandman
/s/ RICHARD BLUM
Richard Blum

APPENDIX E

June 14, 1974

SHEET METAL WORKER APPRENTICESHIP STANDARDS FOR THE GREATER CINCINNATI AREA

These standards when approved by the Union and the Association and when properly registered with the Ohio State Apprenticeship Council, shall supercede all other standards previously registered for this same group.

REGISTERED BY
THE OHIO STATE APPRENTICESHIP COUNCIL
BY /s/ JOHN F. KASTEJO
DATE 7/2/74 Executive Secretary

SHEET METAL WORKERS APPRENTICESHIP STANDARDS FOR AREA UNDER JURISDICTION OF SHEET METAL WORKERS INTERNATIONAL ASSOCIATION – LOCAL # 141

SECTION ONE – PURPOSE

Recognizing the need for more and better trained manpower in the Sheet metal industry of this area, and recognizing that a properly conducted apprenticeship program is the minimal method of acquiring such skilled manpower the Joint Apprenticeship Committee has formulated the following standards to supplement and clarify the provisions of the labor agreement and the provisions of the Sheet Metal Workers Apprenticeship Training Fund. Full administration of these standards shall be vested in the Joint Apprenticeship Committee.

SECTION TWO – DEFINITIONS

"Joint Apprenticeship Committee" – This committee, hereinafter referred to as JAC shall consist of six (6) members. Three (3) members shall be appointed by Local # 141 and three (3) members shall be appointed by the Sheet Metal Contractors Association of Greater Cincinnati (hereinafter referred to as the "Association"). This committee shall also serve as Trustees for Sheet Metal Workers Local # 141 Apprentice Training Trust Fund. The appointment, removal or resignation of Committeemen-Trustees shall as defined in Article X-Section 2 of the Trust Instrument.

"Union" – Sheet Metal Workers International Association, Local # 141 (hereinafter referred to as "Local # 141".

"Employer" – A Greater Cincinnati-based individual, partnership or corporation employing members of Local # 141.

"Apprentice" – A person who has agreed to work at and learn the Sheet metal trade and who is covered by a written Agreement between the "Apprentice" and the "JAC".

"Agreement" – The "Agreement" means the written agreement between the Apprentice and the JAC, acting as agent for Employers, in which the terms and conditions of the apprenticeship are set forth. The "Agreement" shall embrace the "Obligation" and these "Standards" as a part thereof.

"Standards" – Means this entire document, including these definitions.

"Registration Agency" – Shall mean Ohio State Apprenticeship Council.

"Administrator" – A person designated by JAC to keep required records, take proper care of mailing and otherwise fulfill the requirements of these "Standards".

SECTION THREE – RESPONSIBILITY OF JAC

All duly indentured apprentices shall be under the supervision of JAC. JAC shall conduct its activities in accordance with these Standards and the provisions of Sheet Metal Workers Local # 141 Apprentice Training Trust Fund.

1. Determine the need for new apprentices, with due regard to present and future needs of the trade and the number of employers who can qualify for employment apprentices.
2. Advertise for and test apprentice applicants in accordance with the procedures registered with the Ohio State Apprentice Council. These registered procedures shall become a part of these "Standards". Modify such above procedures as may be required by law.
3. Prepare a list of approved applicants by the above procedures and advise by mail those applicants who did not qualify and the reason they did not qualify.
4. Review employers' written requests for apprentices and determine if these requests are valid. Advise employer in writing at once of receipt of request and JAC's action on the request.
5. Place apprentices with employers making valid requests after the following procedures –

A. Securing written "Agreement" with apprentice. This "Agreement" does not obligate JAC to actually employ the apprentice but it does obligate the JAC to sub-indenture the apprentice to a qualified employer for proper training. The agreement also obligates the JAC to use its best influence to keep the apprentice continuously employed when work is available.

B. Registration of the apprentice with Ohio State Apprenticeship Council State Registration Agency.

C. The apprentice, the employer, Local # 141 and JAC shall also be provided with a copy of the agreement. Provide an identification card for apprentice showing date of indenture and signed by chairman of JAC, Consult with Bureau of Apprenticeship & Training U.S. Department of Labor, and other agencies when necessary.

6. Establish minimum standards for education and experience requirements for apprentices.

7. Establish and maintain facilities and instructors to provide 165 hours per year of related training in fundamentals of sheet metal work as defined in Article I, Section 1 of the Standard Form Union Agreement, including use of tools and instruction regarding safe working practices. The JAC shall extend complete cooperation and funds to assure that instructors may provide the best possible education in the time provided for related training. This educational program is for use of Sheet Metal Apprentices only.

8. The JAC shall recognize that the related training given apprentices can only include the teaching of the fundamentals of the trade. The "on-job training" required to advance the skills and general ability of apprentices to journeyman status must be secured through proper "on the job" training. JAC shall advise all employers and Local # 141, in writing, of their obligation in this regard. A lack of proper attention to this "on-job training" by employers and his employed members of Local # 141 shall constitute due reason for JAC to remove apprentices from his employ and Local # 141 shall use strong disciplinary action toward such members of the union.

9. To hear and adjust all complaints of violation of apprenticeship agreements.

10. To arrange with school instructors and "Employers" to provide data for the evaluation of each apprentice's progress every six months to determine if the apprentice is qualified to receive his advancement. JAC will notify the apprentice, the "Employer" and Local # 141 of the results of this evaluation.

11. To provide graduating apprentices with proper certificates of apprenticeship completion and to advise Local # 141 that the graduating apprentice has earned his right to Journeyman status. Local # 141 shall obligate the graduated apprentice to Journeyman status upon receipt of this information.

12. To notify, the appropriate registration agencies of all terminations, cancellations, completions of apprenticeship agreements and reporting for or returning from military duty.

13. Establish and maintain for each apprentice a complete record showing his date of indenture, records of employment, military service, school attendance, evaluation, disciplinary actions and date of completion of indenture. These records shall be open for inspection by any sponsoring organization including the Ohio State Apprenticeship Council, Bureau of Apprenticeship and Training, U.S. Department of Labor.

14. File such reports to provide apprentices with priveleges granted by government agencies in connection with veteran's rights.

15. Prepare and present a complete annual report of JAC activities to the Association and Local # 141.

16. Conduct all activities to assure reasonably continuous employment for apprentices.

17. Advise apprentices through these standards of their responsibility under the "Agreement". Advise apprentices that JAC will exercise its privilege to suspend or revoke his "Agreement" or set him back in progress if the six month period evaluation indicates a lack of responsibility regarding school attendance, school grades, work attendance and general attitude as outlined under Section 6.

18. JAC will place unemployed Apprentices in the order in which they were laid off.

SECTION FOUR – QUALIFICATIONS

I Qualifications for Apprenticeship

(a) Age – Applicants shall be 18-23 years of age. An exception to the age limit can be made for honorably discharged veterans. Special age consideration for military service shall be based on the applicant's age less the number of years served in the military, and not to exceed four years. Further, application for apprenticeship training must be made within one year after honorable discharge.

(b) Education – Applicants shall be high school graduates or possess a certificate of equivalency.

(c) Physical fitness – Applicants must be physically fit to perform the work of the trade and may be subject to a medical examination prior to being employed.

(d) Residence – Applicants must reside, and have been residents for at least three months prior to application in the area over which the joint apprenticeship committee has jurisdiction.

(e) The recruitment, selection, employment, and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin or sex. The sponsor will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30, and EEO regulations of the State of Ohio.

The procedure for recruiting applicants and selecting and ranking apprentices is attached to these standards as APPENDIX "A" and APPENDIX "B".

SECTION FIVE – QUALIFICATION AND RESPONSIBILITY OF THE EMPLOYER

An "Employer does not qualify to receive apprentices if he

is delinquent in the payment of employer or employee contributions defined in the Labor Agreement. The "Employer" must also carry Workmen's Compensation Insurance and Public Liability and Property Damage Insurance.

1. Employers requesting apprentices shall do so in writing and their written request shall list the names of all members of Local # 141 in their employ and the names of all indentured apprentices in their employ.

2. JAC may place apprentices with Employers at the rate of one (1) apprentices for each four (4) members of Local # 141 on the employer's payroll.

3. The Employer shall provide, as required by JAC, such additional information to assure JAC that apprentices placed in his employ will be reasonably continuously employed.

4. The Employer shall advise in writing to JAC the name of the member or members of Local # 141 in his employ who he has designated to assume responsibility for proper "on job" training and counseling of apprentices.

5. Employer and members of Local # 141 who are assuming the responsibility for on job training shall regularly remind apprentices of their responsibility under these standards, and, further, remind them that the JAC has the power to set them back in progress or revoke their agreement if the six month evaluation indicates a lack of attention to their responsibilities.

6. Employers shall understant that apprentices shall work only under the supervision of Journeymen members of Local # 141.

7. The Employer in cooperation with his apprentice supervisors shall provide to JAC the necessary information required to permit JAC to conclude an accurate evaluation of each apprentice every six months prior to the advancement of the apprentices.

8. Employers who hire apprentices without the consent of JAC will be considered in violation of the "Standards" and JAC may remove his apprentices.

9. The employer agrees that the apprentice-journeyman ratio under these standards shall be no more than one (1) appren-

tice for each four (4) employed journeymen members of Local # 141. The employer also agrees that he must advise the office of the JAC at once if circumstances compel him to reduce the number of journeymen on his payroll to the point where he has in his employ more apprentices than established by these standards.

10. If the employer can produce satisfactory evidence that this condition is temporary due to illness of journeymen, due to other trades temporarily delaying his work, or journeymen leaving his employ to go to jobs providing regularly scheduled overtime, etc., JAC may allow his continued employment of the apprentice for one (1) calendar month. If the apprentice-journeymen ratio is not corrected in one (1) calendar month and Local # 141 is in a position to provide Journeymen, JAC may request the return of the apprentice for assignment to another employer.

11. If an employer conducts a sheet metal operation which regularly employs two or three journeymen steadily and if the type of work engaged in offers favorable apprentice training, JAC reserves the right to give favorable consideration to placing an apprentice with such an employer.

12. When an "Employer" returns an "Apprentice" to JAC he shall return the apprentice placed in his employ last. Additional lay-offs shall be in this same order.

SECTION SIX – RESPONSIBILITY OF LOCAL # 141

1. Local # 141 shall inform its membership of their responsibility to properly train apprentices to become skilled in all the phases of sheet metal work covered by Article I, Section 1 of the standard form of union agreement. This training shall include proper and safe use of all tools and equipment of the trade.

2. Local # 141, in cooperation with JAC, shall use its influence to keep all apprentices in reasonably continuous employment to maintain the apprentice manpower pool.

3. Local # 141 shall not place in employment or transfer

any apprentice from one "Employer" to another "Employer" without the express written consent of JAC.

4. Local # 141 shall take effective disciplinary action against any member or members of Local # 141 who fail to fulfill their obligation under these "Standards".

SECTION SEVEN – OBLIGATION AND RESPONSIBILITY OF AN APPRENTICE

The applicant, before assignment to an employer will read and sign an "Apprenticeship Agreement" which accepts these "Standards" be reference and specifically the following obligation.

"I, the undersigned, having made application to be enrolled as an apprentice with the local joint sheet metal apprenticeship committee, and, having head the standards formulated by said committee providing for training of apprentices, and understanding same and all conditions therein contained, do hereby agree to serve such time and perform such manual training and study such subjects as the JAC may deem necessary to become a sheet metal worker".

And the following responsibilities:

A. To perform diligently and faithfully the work of the trade and other pertinent duties as assigned by the employer in accordance with the provisions of these standards.

B. To respect the property of the "Employer" and abide by the working rules and regulations of the "Employer" and the JAC.

C. To regularly attend and satisfactorily complete the required hours of related instruction, as provided in these standards.

D. To maintain such records of work experience and training as may be required by the JAC.

E. To develop safe working habits, and conduct himself in his work in such a manner as to assure his own safety as well as that of his fellow workers.

F. To work for the "Employer" to whom assigned to the

completion of his apprenticeship, unless he is reassigned to another "Employer" by the JAC or his agreement is terminated by the JAC.

G. To conduct himself at all times in a creditable, ethical, and moral manner, realizing that much time, money, and effort will be spent in affording him an opportunity to become a skilled craftsman.

H. An "Apprentice" who goes to work for an "Employer" without written consent of JAC may be dropped from the Apprentice Program.

SECTION EIGHT – TERM OF APPRENTICESHIP

The term of apprenticeship shall not be less than four (4) years (Approximately 8,000 hours) of reasonably continuous employment. It shall be divided into eight (8) periods of 1,000 hours each. The first 1,000 hour period shall constitute a probationary period.

During the probationary period, the agreement may be cancelled by either party notifying the other. After completion of the probationary period, the agreement may be cancelled by the JAC for causes deemed adequate.

SECTION NINE – SUGGESTED SCHEDULE OF WORK PROGRESS FOR SHEET METAL APPRENTICESHIP

Ventilation, heating and air conditioning	2,000 hours
General Sheet Metal Work	1,700 hours
Lay out work, in the shop and on the bench	800 hours
Industrial Sheet Metal	1,000 hours
Specialty Work	500 hours
Measuring, sketching, test and adjusting air balance	1,000 hours
Operation of power equipment	500 hours
Welding, soldering etc.	500 hours
TOTAL	8,000 hours

SECTION TEN – APPRENTICE WORKING HOURS

The hours of work for the apprentice shall be the same as those of journeyman. An employer is permitted to work an apprentice overtime providing such overtime does not interfere with the apprentice attending his night school.

SECTION ELEVEN – APPRENTICE WAGE RATES AND FRINGE BENEFITS

Apprentices shall be paid on a percentage basis of the current wage rate of journeyman sheet metal workers as follows:

First Year	1st half - 50%	2nd half - 50%
Second Year	1st half - 55%	2nd half - 60%
Third Year	1st half - 65%	2nd half - 70%
Fourth Year	1st half - 75%	2nd half - 85%

Employers shall contribute the same fringe benefits for apprentice hours worked as for journeyman hours worked.

SECTION TWELVE – ADMINISTRATIVE PROCEDURE

A. The Local "JAC shall elect a Chairman and a Secretary, and shall determine the time and place of regular meeting.

B. The Chairman and Secretary shall have the power to vote on all questions affecting apprenticeship.

C. When, in any year, the Chairman of the JAC is a representative of the "Association" then the Secretary shall be a representative of Local # 141 or vice versa.

D. The JAC shall establish such additional rules and regulations governing its administrative procedure as are required.

E. Nothing contained in the standards shall in anyway abridge the full autonomy of a JAC to supervise and administer its local program.

F. Any action by the Trustees may be taken either at a meeting or in writing without a meeting. Concurrence of a majority of the Trustees shall be required for any action taken

on any matter unless there is concurrence of at least two Union Trustees and two Employer Trustees. Concurrence of all the Trustees shall be required for action taken without a meeting.

G. The Union and Association may designate an equal number of alternate Committeemen and designate alternates by number if there is more than one alternate Committeeman. An alternate Committeeman may participate in meetings, but shall have the rights to vote only in the abscence of a regular Committeeman who the alternate replces in accordance with his numerical alternate designation.

SECTION THIRTEEN – EXPENSES INCURRED IN ADMINISTRATION OF STANDARDS

Expenses of JAC in carrying out the provisions of these "Standards" shall be borne by Sheet Metal Workers Local # 141 Apprenticeship Training Trust Fund.

SECTION FOURTEEN – AMENDMENTS TO STANDARDS

Standards may be amended at any time by a two-thirds vote by action of the JAC, subject to approval by the "Association" and Local # 141. Such amendments shall not alter apprenticeship agreements in effect at the time of such change without the express consent to all parties to such agreement.

SECTION FIFTEEN – ADJUSTING DIFFERENCES

In case of dissatisfaction between the "Employer" and the "Apprentice" either party has the right and privilege of appeal to the JAC for such action and adjustment of such matters as come within these standards.

SECTION SIXTEEN – GENERAL PROVISIONS

These "Standards" when approved by "Local 141" and the

"Association" and registered with the Ohio State Apprenticeship Council shall supercede all other Standards including amendments previously registered and approved for this same group. Nothing in these Standards shall be interpreted as being contrary to the present or subsequent bargaining agreement.

APPENDIX "A"

AFFIRMATIVE ACTION PLAN
CINCINNATI AREA SHEET METAL WORKERS JAC

UTILIZATION STUDY

MAY 1974

Total Apprentices Currently in Program 66
Total Minority Apprentices Currently in Program 9
Percentage of Minority Apprentices Currently in Program 13.6%
Program Underutilized No Overutilized Yes

The above utilization is based on a statistical analysis of the population ratio in the are as set out below:

Counties	Total Population	Negro Population	Other Minority	Total Minority
Boone (Ky)	32,812	156	53	209
Campbell (Ky)	88,501	801	131	932
Kenton (Ky)	129,440	3,699	3,178	3,877
Hamilton (Ohio)	929,018	145,294	3,061	148,355
Highland (Ohio)	28,996	729	54	783
Brown (Ohio)	26,635	509	18	527
Clermont (Ohio)	95,725	896	164	1,060
Dearborn (Ind)	29,430	202	46	248
TOTALS	1,360,557	152,286	3,705	155,991

GOALS & TIME TABLES

It is the intent of the Committee to keep the minority population ratio in our progrom at the 11.4% level or better which is based on the Statistical Analysis shown above. Since we are now over this ration we request an exemption from the establishment of Goals & Time Tables at this time.

OPERATION OF RECRUITMENT PROGRAM

At least thirty (30) days prior to the acceptance of applications the JAC shall post notices of the time and place where applications will be accepted and the qualifications for consideration as apprentices. These notices shall be sent to:

1. The local BAT office.
2. The counseling office of the local public school systems.
3. The counseling department of the specific school systems which have a 40% or better minority enrollment.
4. The Outreach Program for the area.
5. The various minority serving organizations in the area such as concentrated Employment Program, Opportunities Industrialization Center, Urban League, Human Relations Development Institute, Human Relations Commission, and any others not enumerated.
6. Public advertising in the news media including those publications which primarily serve the minority community.
7. The state employment service offices serving the area from which applicants are to be accepted.
8. Any other group or groups from which a reasonable number of minority applicants could be expected to respond.

In addition to the above the Committee will make known their goals and purposes to the Sheet Metal Industry and request their cooperation and response, and adopt any other procedure that would be helpful in meeting the program goals.

The sponsor will accept applications for a period of at least two (2) weeks after which time the processing of the applications will be in accordance with the Selection Procedures

(Appendix "B"). All applications and related information shall be kept for a period of at least 5 years.

APPENDIX "B"
June 11, 1974

SELECTION PROCEDURE

I. Opening of Apprenticeships

The Joint Apprenticeship Committee will determine the time when the program will receive applications.

II. Advertising the Nature and Availability of Apprenticeships

Advertising and public notification will be in accordance with the procedures outlined in the Affirmative Action Plan.

III. Taking Applications

Before a prospective apprentice appears to file an application, it shall be determined immediately whether or not he meets the primary qualifications as to age and education. If he appears to meet these two qualifications, he will then be asked to complete the application form. The application will be completed under the supervision of some person authorrized by the Apprentice Committee.

IV. Instructions to Applicants

The applicant shall furnish a transcript of his high school grades to the Joint Apprentice Committee. If he has not graduated from high school, but has passed a general education development test, he must furnish his certificate of equivalency in addition to his high school transcript.

A copy of the rules and regulations and/or apprentice standards, plus other material the committee may consider pertinent shall be given the applicant.

His obligations to the union during this apprenticeship and after completion shall be explained to the applicant.

He shall be scheduled for aptitude or other testing. If the Committee prefers they may wait on his transcript of grades

to verify his high school record before testing. In such case, the applicant shall be told that he will be advised about testing upon receipt of his transcript.

V. Testing Applicants

All applicants will be required to pass the aptitude test administered by an independent testing agency (at the present time the Committee is using Cincinnati Technical College as the testing agency). The top 50 scores will be called in for interview and ranking with the others on the list kept for future call in if necessary to meet our needs.

V. Completed Application

The application will be deemed complete when the transcript of the grades and the result of testing are received by the Joint Apprenticeship Committee.

If both test results and transcript meet the qualifications established by the Joint Apprenticeship Committee, the applicant shall be scheduled to appear for his interview.

VII. Interview

For this interview, the applicant appears before the Joint Apprenticeship Committee, and a person designated by the committee shall lead the interview. Each member of the committee will complete an "Apprentice Evaluation Form" for each applicant. Scores will be determined on the basis of the following factors: education, work experience, conduct record, references and oral interview.

After the final interview is completed, the apprentice applicant will be dismissed and told that he will be advised, by letter, of the results.

VIII. Determining the Final Evaluation Score

The evaluation scores by each member shall be totaled and averaged to determine the final evaluation score for the purpose of determining the order of qualified applicants.

IX. Physical Examination

Qualified applicants may be required to pass a physical examination by a licensed physician who has been recommended

by the Joint Apprenticeship Committee. If the applicant does not pass the physical examination, he shall no longer be eligible for consideration as as apprentice and be so notified.

X. Placing of Apprentices

Qualified applicants shall be eligible for selection and employment as apprentices for a period of two years. Selection will be made in descending order of their qualifications (ranking).

It is recommended that the period for receiving applications not exceed thirty (30) days.

XI. Retention of Applicant Records

Records of the selection process including interviews for all applicants, shall be retained by the Joint Apprenticeship Committee for not less than five years and in such manner as to permit indentification of minority participants.

Name .....
Date .....

SHEET METAL APPRENTICE SELECTION RATING AND SUMMARY

Aptitude Test Results (Independent)

Note: The applicant ranking fiftieth (50th) in the aptitude test shall be given a score of 30. The top ranking applicant shall be given a score of 60. Those in between shall be given a score between 30 and 60 in proportion to their score on the aptitude test.

Education

1. Mathematics – Algebra or other math, 1 year (2 points; plane geometry (2 points); advanced algebra or trigonometry (1 point). 0-5

2. Drafting – 1 year (2 points), 2 years (4 points), 3 years (5 points) 0-5

3. Shop courses, minimum 1 year (2 points), 2 years (4 points,) over 2 years (5 points) 0-5

4. Any schooling beyond high school including night school, correspondence courses, armed forces schools, or college 0-5

20 points

Personal Interview (Committee)

Attitude	(5)	_____
Interest	(5)	_____
Physical Factors	(5)	_____
Personal Traits	(5)	_____
	(20)	_____
Total	100	_____

Physical Exam (Physician) Pass Fail

BY: /s/ RICHARD SCOTT
Committee Member

APPROVED BY:

Sheet Metal Contractors of
Greater Cincinnati, Inc.

/s/ ARTHUR W. DANFORD
Title: Chapter Manager
Date: June 28, 1974

Sheet Metal Workers International
Association, Local Union No. 141

/s/ JOHN D. BUTLER
Title: Business Manager
Date: June 28, 1974

APPROVED BY:

The Greater Cincinnati Area Sheet Metal
Workers Joint Apprenticeship Committee

By: /s/ PAUL J. ROESSLER Chairman
Date: June 21, 1974
By: /s/ WM. J. (Illegible) Secretary
Date: June 21, 1974

APPENDIX F

All applying employers shall be granted one apprentice for each block of 6,400 hours of work accumulated by any and all journeymen who worked for the applying employer in the twelve month period preceding the application of the employer. Included in that 6,400 hours shall be the work time of journeymen who are members of Local 141 or of sister Locals in the Sheet Metal Workers International such as travelers.

APPENDIX G

§ 186. Restrictions of payments to employee representatives

(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value –

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own shoosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to

influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 USCS §§ 301-327]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with

respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, togther with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and

shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice; Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceedings directed (i) against any such employer or its officers or agents except in workman's compensation

cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended [29 USCS §§ 151-158, 159-168], or this Act [29 USCS §§ 141-144, 151-158, 159-167, 171-183, 185-187, 557]; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959 [USCS §§ 153, 158, 159, 160, 164, 186, 187, 401-402, 411-415, 431-441, 461-466, 481-483, 501-504, 521-531]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) [(b)(5)] of the Labor Management Cooperation Act of 1978 [29 USCS § 175a note].

(d) Any person who wilfully violates any of the provisions of this section shall upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U.S.C., title 28, sec. 381 [28 USCS § 381]), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec 17, and title 29, sec. 52) [15 USCS § 17; 29 USCS § 52], and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932

(U. S. C., title 29, secs. 101-115) [29 USCS §§ 101-110, 113-115].

(f) This section shall not apply to any contract in force on the date of enactment of this Act [June 23, 1947], until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

(June 23, 1947, c. 120, Title III, § 302, 61 Stat. 157; Sep. 14, 1959, P. L. 86-257, Title V, § 505, 73 Stat. 537; Oct. 14, 1969, P. L. 91-86, 83 Stat. 133; Aug. 15, 1973, P. L. 93-95, § 1, 87 Stat. 314.)

CASE NO. 83-41

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; PAUL ROESSLER, KEVIN CAHILL, LEE COSTELLO, TRUSTEES OF SHEET METAL WORKERS LOCAL 141, APPRENTICE TRAINING,

Petitioners,

vs.

DAVID E. SANDMAN, JOHN E. McDONALD, STUART F. YOUNG, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING FUND,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENTS

I. COUNTERSTATEMENT OF FACTS

A. JOINT APPRENTICE COMMITTEE.

The Joint Apprentice Committee (JAC) was established in July, 1967 in pursuance to the SHEET METAL WORKERS

LOCAL 141 APPRENTICE TRAINING TRUST FUND. ("Trust Fund") (Petitioners Appendix, hereinafter "P.A.", 48a-63a) This Trust Fund was provided for by a Collective Bargaining Agreement ("CBA"). Among other things, it called for the establishment and continuance of an apprentice educational trust fund. Contributions were to be made by employers. Three employer representatives were appointed, and three Union members were appointed (see Article X of the Trust Fund). Article X, Section 8, provided that in the event of a deadlock of the trustees "on any of the affairs of this Trust, an impartial umpire to decide the matter in dispute shall be appointed by consent of all the Trustees . . ." but if they can not agree, then a petition to the United States District Court, Southern District of Ohio, for the appointment could be used. (P.A. 60a).

On June 14, 1974, the SHEET METAL WORKER APPRENTICESHIP STANDARDS ("Standards") was signed. (P.A. 65a-82a) Administration of those standards was vested in the JAC (see Section One). The ratio of one apprentice for each four journeymen is required by Section 5(2) and (9) of the Standards and Article XI, Section 3 of the CBA. The Standards were worked out with the State of Ohio. They were part and parcel of an affirmative action program aimed at getting more adequate representation of minorities in the sheet metal workers trade. The below discussed frustration of the plan by the Appellants frustrates the affirmative action program as well. (See finding of the Trial Court to that effect, P.A. 12a)

B. PROBLEMS IN IMPLEMENTATION OF THE PROGRAM, AND THE FIRST USE OF THE GRIEVANCE ARTICLE OF THE COLLECTIVE BARGAINING AGREEMENT.

The aspirations of training apprentices was frustrated by the actions of Local 141. As can be seen from the Affidavit of Richard J. Blum, (See p. 1a-3a of this brief's Appendix, hereinafter "App.") this frustration of the purposes of the Apprentice Training Program started at least as early as December, 1973. At a meeting of the JAC, management proposed the appointment of 27 new apprentices; the Union recommended 12 new apprentices. The issue was deadlocked. To resolve the deadlock, the grievance machinery of the Collective Bargaining Agreement was used.

The grievance machinery provides as its first step for a hearing before a Local Joint Adjustment Board (LJAB) comprised of equal representatives of management and the union. In the event of a deadlock at that step, then there is an appeal to a two-man panel comprised of one representative from the International and one from the National Sheet Metal Contractors' Association (SMACNA). In the event of no satisfactory resolution at that step, then an appeal can be made to the National Joint Adjustment Board (NJAB) which was comprised of equal numbers of representatives from the International and SMACNA. If that deadlocked, then the parties could resort to economic coercion.

This first JAC grievance resulted in a deadlock at the LJAB level. This was appealed to the two-man panel, which held a hearing on April 11, 1974. Its decision was announced on June 7, 1974. The decision was unanimous that the JAC was in violation of the Trust Fund. The panel retained jurisdiction. On October 22, 1974, the panel was reconvened and again unanimously found non-compliance with its April 11, 1974 order (App. 2a). On March 31, 1975, the panel was again reconvened. It announced on April 4, 1975, that the

JAC had still failed to comply with the April and October, 1974 decisions. On April 21, 1975, the JAC met and again deadlocked. On April 25, 1975, the grievance machinery of the LJAB was convened and deadlocked. On May 1, 1975, the local Sheet Metal Contractors' Association (SMAC) suggested a meeting with Local 141. This was rejected on May 8, 1975 by Local 141. The SMCA then appealed to the National NJAB. (App. 3a). On July 28, 1975, the NJAB ordered compliance with the panel decision and the furnishing of apprentices. This decision was announced around August 1, 1975, *nearly twenty months after the initial JAC deadlock of December 13, 1973!* (App. 3a)

C. NEXT USAGE OF THE GRIEVANCE MACHINERY OF THE COLLECTIVE BARGAINING AGREEMENT.

The Apprenticeship Program came almost to a total stop between December, 1973 and December 31, 1977. In the period between 1975 through 1977, there were only three apprentices indentured. Local 141 thus continued to frustrate the affirmative action program.

The problems again started in October, 1976. Management's request for the appointment of nine new apprentices was deadlocked. (App. 4a). Nothing was done to break the deadlock. There were discussions at the JAC meeting of February 21, 1977. On October 30, 1978, at a JAC meeting, Local 141 representatives (in response to a management request) stated that they would give consideration to a new class of apprentices at the January, 1979 meeting.

At the January 3, 1979 meeting, however, the Local 141 representatives left the meeting, because one of the management representatives on the JAC (John McDonald) came from the McDonald Company, which "did not recognize the shop steward." As a result, Local 141 "would not recognize

John McDonald as a Member of this Committee." (App. 5a)[1] The services of the LJAB were then sought. At an intervening JAC meeting in February, 1979, there was a deadlock as to whether there would be thirty-three new apprentices indentured or fifteen. At the February 22, 1979 LJAB meeting, the LJAB deadlocked on that issue. Upon appeal to the two-man panel, it held a hearing on April 19, 1979. It announced on June 7, 1979 that the JAC be required to "immediately indenture sufficient apprentices to honor all valid requests . . ." Again, there was no compliance with that order of the two-man panel. On September 7, 1979, Esposito complained to SMACNA about Local 141's non-compliance with the orders of the various panels and its delays. The Chairman of SMACNA forwarded that letter to the President of the International, Edward J. Carlo. There has been nothing but silence in the intervening 47 months from SMACNA. (App. 6a)

On April 14, 1980, the question of new apprentices was again raised and discussed. Another discussion occurred on June 16, 1980 about twelve new apprentices. The Union requested a delay until the July meeting. The July meeting was postponed until August 18, 1980. At that meeting, management's request for seven apprentices was deadlocked. At a JAC meeting, on August 25, 1980, a request for thirteen apprentices was deadlocked again. On August 28, 1980, Esposito complained again to SMACNA about Local 141s delays and requested a reconvening of the panel. (App. 6a) Nothing has happened in the intervening thirty-six months.

At the JAC meeting on October 7, 1980, the question of when a new class would be appointed was raised, and nothing happened. At a meeting of the JAC on March 16, 1981, the

---

[1] This thinly distinguished stall was a flagrant violation of the fiduciary obligations of the Union Trustees to the apprentice program. As to that fiduciary duty, see *NLRB* v. *Amax Coal Co.*, 453 U.S. 322 (1981) *infra.*

Resolution of when an apprentice should be appointed was submitted by the management representatives and deadlocked. (App. 6a-7a) Upon that deadlock, resort was finally made to the route of appointment of an umpire, as per Article X, Section 6, of the Trust. The Union would not cooperate and countered by seeking to use the discredited grievance machinery under Article X of the Collective Bargaining Agreement. The complaint was then filed in the District Court in April, 1981.

D. PROCEEDINGS IN THE TRIAL COURT.

The Complaint set out the above history and requested the Court to require submission of the deadlocked March, 1981 Resolution to an umpire, in pursuance to Article X (8) of the Trust. An Answer and Counterclaim was filed by the Defendant-Appellants. Appellees filed a Motion for Summary Judgment to require this matter to be submitted to an umpire. Defendant-Appellants filed a Cross Motion for Summary Judgment to require this matter to be submitted to the grievance Article of the Collective Bargaining Agreement.

The Court heard the motions on affidavits and legal memoranda. It issued its opinion and order on January 13, 1982 granting Plaintiff-Appellees their Motion for Summary Judgment and denying Defendants' Motion for Summary Judgment. The Court, after summarizing the instruments and law, examined the sorry history of delay and frustration of the very purpose of the Apprentice Program. It noted that the history reflected "an almost continuous state of impasse . . . on the number of apprentices which may be indentured . . ." (P.A. 11a) It concluded that as a result ". . . the Trust does not effectively function according to its purpose . . ." and the program "has been frustrated since December, 1973." (P.A. 12a) The Court rejected Appellants' argument that (1) there was no deadlock and (2) this dispute allegedly was not an "affair of the trust." (P.A. 13a-14a). It ordered that a joint list of suggested individuals be submitted to the Court from

which it would select an impartial umpire. Defendant-Appellants then appealed.

E. THE DECISION OF THE SIXTH CIRCUIT.

The Sixth Circuit affirmed the decision of the Trial Court by cataloging the various arguments presented by each side, and then noting that when the Union and Employer Trustees had previously deadlocked over the number of apprentices an employer was entitled to, "the deadlock could have been settled by an appointment of an impartial umpire . . ." but neither had sought to break the deadlock with an umpire. As to the 1981 resolution, the Court of Appeals held that the District Court Judge correctly concluded that the function of the resolution was not to "modify the collective bargaining agreement, but rather only to 'clarify the basis on which the 4 - 1 ratio shall be applied and to make the terms of the JAC Standards of the Trust Agreement . . . consistent with the language of the collective bargaining agreement' . . " (P.A. 5-6).

The Court awarded costs to the Management Trustees and denied a motion of the Petitioner Union Trustees to stay the mandate, pending their attempt to get this case into this Court.

ARGUMENT FOR DENIAL OF THE WRIT

THIS COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI, BECAUSE THE PURPOSE OF THE RESOLUTION IS MERELY TO CLARIFY AMBIGUITIES THAT EXIST IN THE LANGUAGE OF THE BASIC DOCUMENTS IN ESTABLISHING THE APPROPRIATE RATIOS OF APPRENTICES TO JOURNEYMEN.

The purpose of the resolution is merely to clarify ambiguities that exist in the language of the basic documents in establishing the appropriate ratios of apprentices to journeymen.

A. The Problems Arising Out Of The Documents.

There were two methods that the Union Trustees used to frustrate for nine years the apprenticeship program, and its affirmative action aspiration of bringing more women and Blacks into the sheet metal industry in Cincinnati. The first method was through inordinate delays occasioned by the grievance procedure of the CBA. Second, the union trustees exploited the ambiguities in the basic documents to frustrate the apprenticeship program.

The basic documents specified that there should be one apprentice for each four journeymen that an employer had. There was a slight difference in the terminology that was used. The CBA specified that each employer shall be given one apprentice for each four journeymen "regularly employed throughout the year" (Article XI, Section 3). The Standards provided that there should be one apprentice for each four "members of Local # 141 on the employer's payroll." (App. 35.) Agruments erupted between the Appellee management trustees and the Appellate Union Trustees as to whether journeymen of sister locals who had to be used by the employers due to Local 141's inability to provide journeymen

could be considered in determining the ratio. Further, there were arguments as to what constituted "regularly employed throughout the year."

All three of the basic documents authorized and required the Trustees to formulate rules and regulations. (See Article XI, Section 1, of the CBA; Article VI, Section 1 (b) and (c) of the Trust and Section 12 (D) of the Standards.) The March 19, 1981 Resolution attempted to clarify and implement the one to four ratio by specifying that there should be one apprentice "for each 6400 hours of work accumulated by any and all journeymen . . . in the 12 month period preceding the application of the employer." It further stated that it would include the time of journeymen of sister locals to Local 141. (App. 47.)

B. Arguments of Petitioner Union Trustees.

The complaints of the Union Trustees, set out in their QUESTIONS PRESENTED FOR REVIEW, in support of this Petition for Writ of Certiorari are three in number:

1. Any umpire appointed will have to interpret and "modify" the CBA, despite the fact that disputes over interpretation of the Collective Bargaining Agreement are subject exclusively to the grievance procedure of the CBA.

2. The 1981 resolution constitutes an amendment to the Trust Agreement, and amendments can only be made by the Union and the Employer Association who are parties to the CBA.

3. The umpire resolution procedure for Taft-Hartley Trusts contained in 29 U.S.C. 186(c)(5)(B) is confined to matters of "administration," and that envisions only day-to-day managerial acts and not the matter contained within the 1981 resolution.

C. Umpire Resolution Of Trustee Deadlocks Are Compelled And Encouraged By The Law.

To respond properly to Petitioners' complaints, it is necessary to examine the unique role played by umpire resolution of deadlocks in Taft-Hartley Trusts, such as the one being considered herein.

As part of the Taft-Hartley Act, the Labor Management Relations Act was passed in 1947. Section 302(a) (29 U.S.C., Section 186) prohibits any employer or association of employers to pay any money or thing of value to labor organizations or their representatives. Section 302(c) specifies exceptions to that prohibition. Under 302(c)(6), it is permissible for an employer to contribute to a "trust fund . . . for the purpose of . . . defraying costs of apprenticeship or other training programs . . ." provided he complies with Section 302(c)(5)(B). That section specifies, among other things, that in the event the representatives of the employers and employees deadlock, then the agreement must provide that "the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree . . . an impartial umpire to decide such dispute shall . . . be appointed by the District Court of the United States . . ."

The Trust expressly provides, Article X(8), for implementation of the above statutory requisites. It reads as follows (P.A. 60a):

> "*Section* 8. In the event of a deadlock among the Trustees on any of the affairs of this Trust, an impartial umpire to decide the matter in dispute shall be appointed by consent of all of the Trustees, and if the Trustees have not selected an impartial umpire who has signified his acceptance, within ten (10) days after the deadlock arose, anyone or more of the Trustees may petition the United States District Court, Southern District of Ohio, for the appointment of an impartial referee or umpire to decide such dispute."

In *NLRB* v. *Amax Coal Co., et al.* 453 U.S. 322 (1981), this Court highlighted the compulsory arbitration aspects of Section 302(c)(5) when it stated the following (453 U.S. at 337):

> "Finally, disputes between benefit fund trustees over the administration of the trust cannot, as can disputes between parties in collective bargaining, lead to strikes, lockouts, or other exercises of economic power. Rather, whereas Congress has expressly rejected compulsory arbitration as a means of resolving collective-bargaining disputes, § 302(c)(5) explicitly provides for the compulsory resolution of any deadlocks among welfare fund trustees by a neutral umpire. Compare 29 U.S.C. § 158(d) with 29 U.S.C. § 186(c)(5); see n. 12, supra."

This Court reiterated the same thing later in the opinion. (453 U.S. at 338):

> "And whereas Congress has adopted the principle of voluntary settlement, free of governmental compulsion, in the adjustment of employee grievances against the employer, § 203(d) of the Act, 29 U.S.C. § 173(d), a trustee deadlock over eligibility matters, *like any other deadlock, must be* submitted to the compulsory resolution procedure established by § 302(c)(5)." (emphasis added)

Thus, the philosophy of dispute resolution in a 302(c)(5) trust is different from that under the National Labor Relations Act, in that the former *compels* binding arbitration.

D. The 1981 Resolution Meets The Legal Test of Whether The Deadlocked Issue Should Be Submitted To Umpire Resolution.

What test is used to determine whether the issue will be submitted to an umpire? In *Barrett* v. *Miller*, 276 F.2d 429 (2nd Cir. 1960) (cited by appellants at page 12 of their brief) the Court of Appeals held that an umpire could not be appointed on the question of whether the Trust could use self-insurance because under the express terms of the Trust, it was required to use insurance companies. The Second Circuit noted that as to the appointment of an umpire under Section 302(c) (5) the same test is used as that to determine when to appoint an arbitrator for a collective bargaining agreement under Section 301. The test is whether the action was "plainly beyond the powers conferred upon the trustees . . ." In *Mahoney* v. *Fisher*, 277 F.2d 5, (2nd Cir. 1960), the Second Circuit construed *Barrett* as finding that the self-insurance concept was "definitely *ultra vires* as a matter of law." This Court has similarly defined the issue when the question is whether a district court will require arbitration under a collective bargaining agreement. This Court stated in *United Steelworkers* v. *Warrior & Gulf Navagation Co.*, 363 U.S. 574 (1960):

> "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that it covers the asserted dispute. Doubts should be resolved in favor of coverage."

The Resolution proposed by the management trustees was that an employer should be granted one apprentice for "each block of 6400 hours of work accumulated by any and all journeymen . . . in the 12 month period preceding the application" and should include "members of local 141 or of sister locals such as travelers." Is this Resolution "plainly beyond the powers conferred on the trustees"? It is "definitely *ultra vires*

as a matter of law . . ."? Can it be said "with positive assurance that the (umpire) clause is not susceptible of an interpretation that it covers the asserted dispute"?

The very essence of this apprentice trust is the selection and training of apprentices. Article VI, Section 1, of the Trust states that the trustees *shall:*

> "(b) Formulate and administer a plan for the exclusive purposes of the training and education of apprentices, adopt such uniform rules and regulations as are consistent with and necessary to the performance of their duties as prescribed herein, and exercise such powers and duties as are consistent with and may be reasonably necessary to carry out the purposes of said plan.
>
> "(c) Make such amendments or changes to said plan from time to time as the Trustees consider will best effectuate the purposes of said plan. A copy of the rules and regulations voted upon by the Trustees and approved, together with changes from time to time, shall be forwarded to the Union and to the Association so that adequate information and publicity may be had." (P.A. 52a)

Obviously, the proposed resolution was part of their duty to formulate a plan for the training and education of apprentices. It is an attempt to adopt rules and regulations to implement their responsibilities. The Resolution would help determine the number of apprentices and is "necessary to the performance of their duties." This was an attempt to make "such amendments and changes" to "best effectuate the purposes of said plan . . ."

Article XIII, Section 2, of the Trust specifies the following:

> "*Section 2.* The provisions of this Trust Agreement shall be liberally construed in order to promote and effectuate the establishment and operation of the Apprentice Training Trust program herein contemplated. The Trustees shall have power to interpret, apply and

> construe the provisions of this Trust Agreement, and any construction, interpretation and application adopted by the Trustees in good faith shall be binding upon the Union, the Association, the Employers and the Employees." (P.A. 61a)

Thus, the Trust requires liberal interpretation and good faith construction by trustees of the Trust is permitted. Section Three (1) of the Standards states the trustees shall:

> "1. Determine the need for new apprentices, with due regard to present and future needs of the trade and the number of employers who can qualify for employment of apprentices." (P.A. 67a)

Further, the CBA specifies in Article XI, Section 1 that the JAC shall "formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement to govern eligibility . . . and the operation of an adequate apprentice system to meet the needs and requirements of the trade." (P.A. 32a) As noted earlier, Article XI, Section 3 specifies that JAC *shall* grant one apprentice for each four journeymen regularly employed throughout the year. (*id.*) The standards of the Trust, on the other hand, specify that the JAC "*may* place apprentices with employers at the rate of one apprentice for each four members of Local 141 on the employer's payroll." Thus, the Trust has a broader definition by eliminating the phrase "regularly employed throughout the year" and a narrower definition by specifying that the four journeymen shall be members of Local 141. But Section Sixteen of the Standards states:

> "Nothing in these Standards shall be interpreted as being contrary to the present or subsequent bargaining agreement." (P.A. 77a)

Thus, the 1981 Resolution is not beyond the scope of the trustees authority under the Trust Agreement. It is an at-

tempt to reconcile the Trust and the Collective Bargaining Agreement on an unresolved problem that has been festering for nine years. The Collective Bargaining Agreement specifies that the JAC *shall* provide one apprentice for each four journeymen regularly employed throughout the year; the Trust Standards specify that the JAC *may* grant an apprentice for each member of Local 141. The Trust is to be "liberally construed"; a good faith "construction, interpretation and application" of the Trustees is binding on all (Art. XIII, Sec. 2). Whether the proposed March, 1981 Resolution is proper is for the umpire to decided. The Resolution is not "plainly beyond the powers conferred upon the trustees." It is not "definitely *ultra vires* as a mttter of law"; it can not be said "with positive assurance that the (umpire) clause is not susceptible of an interpretation that it covers the asserted dispute." As the Supreme Court said in *United Steelworkers* v. *Warrior* & *Gulf, supra:*

"Doubts should be resolved in favor of coverage."

E. The 1981 Resolution Does Not Modify The Collective Bargaining Agreement Nor The Trust Agreement, But Rather Attempts To (1) Clarify The Basis On Which The 4 To 1 Ratio Is To Be Applied and (2) Reconcile Language Of The Trust, Trust Agreement Standards And The Collective Bargaining Agreement.

The first two complaints of the Petitioner Union Trustees are essentially that the 1981 Resolution is an attempt to do something that the Trustees, and relatedly an umpire, have no power to do, that is, (1) to interpret and modify the Collective Bargaining Agreement and, (2) amend the Trust Agreement.

The Sixth Circuit Court of Appeals expressly stated that the District Court Judge correctly concluded that the Resolution did not seek to modify the Collective Bargaining Agreement,

but rather only sought to clarify the basis on which the 4 to 1 ratio should be applied and reconcile the terms of the Trust Agreement with the language of the Collective Bargaining Agreement. (P.A. 6a)

The rejection of this concept of amendment of the Trust Agreement and the Collective Bargaining Agreement was stated best by Judge Spiegel, the trial judge, as follows:

> "Defendants argue that adoption of the resolution is beyond the scope of the trustees' authority under the Trust Agreement since it constitutes an amendment to the Collective Bargaining Agreement and the Trust Standards.
>
> Article XI, Section 3 of the Collective Bargaining Agreement executed June 1, 1980 by the Association and the Union states that:
>
> > It is hereby agreed that the employer shall apply to the Joint Apprentice Committee and the Joint Apprentice Committee shall grant apprentices on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year.
>
> This language parallels that of Section 5(2) of the Trust Standards as well as Section 9 with the exception that the Collective Bargaining Agreement does not require, as both Sections do, that the "regularly employed journeymen" be members of Local # 141.
>
> Under the language of the proposed resolution, one apprentice may be indentured to an employer for each block of 6,400 hours accumulated by the work of journeymen who have worked for the applying employer over a twelve-month period. Roughly translated, such figures equal your journeymen, each working 1,200 hours per year or thirty, forty-hour weeks out of a possible fifty-two.[2] This resolution is consistent with the Collec-

[2] The analysis of the Judge is correct, but the math is slightly wrong. It is 1600 hours or forty, forty-hour weeks out of fifty-two.

tive Bargaining Agreement in that it does not require that the journeymen only be members of Local # 141. Thus, rather than seeking to amend the Collective Bargaining Agreement, the resolution, in the Court's opinion, attempts to clarify the basis on which the 4-1 ratio shall be applied and to make the terms of the JAC Standards of the Trust Agreement, specifically Sections 5 and 9, consistent with the language of the Collective Bargaining Agreement, by deleting the requirement of journeyman membership in Local # 141. Such an amendment of the JAC Standards of the Trust Agreement is clearly within the trustee's power. Article VI, Section 1(c) of the Agreement. Article VI allows the trustees to amend or change the Standards so as to best effectuate the purpose of the Trust. Indeed, Article VI of the Agreement vests the sole discretion of administering the Trust in a workable manner, including the adoption of such rules and regulations as are necessary to the performance of their duties, with the trustees. Clearly amendment of the Standards to conform to the Collective Bargaining Agreement and proposing regulations by which those Standards, such as the 4-1 ratio, may be implemented, are central to the effective administration of those Standards and the Trust. Accordingly the Court has no difficulty finding that the proposed resolution is within the trustee's power and concerns the affairs of the Trust."

We can not improve upon that elucidation of the issues. The position of both the Sixth Circuit and the District Court Judge are reasonable and sensible and do not warrant any intervention by this Court.

F. The 1981 Resolution Is Subject To Umpire Resolution Because It Meets The Requisites Of Both The Statute And Of The Trust Itself.

28 U.S.C. Section 186 (c) (5) (B) provides for umpire resolution when there are deadlocks "in the administration of such fund . . ." The Union Trustees complain that the 1981 Resolution does not constitute a matter of "administration" under the Statute, because "administration" is confined to "day-to-day managerial (matters) over which the Trustees have been given full and final authority . . ." (See QUESTIONS PRESENTED FOR REVIEW, 2, page i of the Petition for Review.) This Court should not consider this issue because the Petitioners did not raise it in District Court nor the Sixth Circuit. The argument they made below was that the Resolution did not fit within "any affairs of this Trust", which was the language from the Trust Agreement itself for submission to umpire resolution. (See Article X, Section 8, P.A. 60a). Because this Court does not consider issues that have not been raised below, this Court should not allow this case in on that issue.

Secondly, even if this 1981 Resolution does not fit within the word "administration," the Trial Court held that the Resolution was within the definition of "affairs of this Trust." (P.A. 13a-14a) and the Sixth Circuit affirmed. (P.A. 6a) The Union Trustees dropped that as an issue in this Petition for the Writ. A matter may be submitted to umpire resolution either on the basis of the statute or on the basis of the express terms of the Trust Agreement itself. (See *Ader* v. *Hughes*, (10th Cir., 1978), 570 F.2d 303, where the court found that the issue was not submissible under the statute, but was submissible under broader language of the Trust Agreement.) Since there is a finding already by the courts below that this issue is submissible under the express terms of the Trust Agreement and the Petitioners are not raising that finding as an issue in this Petition, whether the 1981 Resolution fits within the statutory word "administration" is irrelevant.

Finally, this Resolution is a matter within the statutory word "administration." The very heart and essence of this Trust is the appointment and training of apprentices. The Trust is deadlocked on the number of apprentices. The Trustees must not do things inconsistent with the Collective Bargaining Agreement. (See Section 16 of the Standards, P.A. 77a, and Article XI, Section 2 of the Collective Bargaining Agreement, P.A. 32a.) Thus, they must do some interpreting of the Collective Bargaining Agreement to do their job. The Union Trustees cite no authority for the proposition that this would not be an "administration" of the Trust. The argument should be rejected.

CONCLUSION

Based on the foregoing, this Court should deny the Petition for Writ of Certiorari because:

1. The 1981 Resolution is aimed only at clarifying the basis on which the 4 to 1 ratio should be applied and to reconcile the terms of the various agreements, and

2. It is submissible to umpire resolution under both the terms of the statute and the express terms of the Trust itself.

The attempt by the Petitioner Union Trustees to force this matter back into the discredited grievance machinery is a continuation of their program to frustrate the entire Apprentice Program and the related affirmative action plan for Cincinnati. As Judge Spiegel said, after reviewing this sorry history (P.A. 12a):

> One inescapable fact emerges from our examination of the affidavits, agreements, minutes, correspondence, and other material submitted by the parties, and that is that the purpose of the establishment of the Joint Apprenticeship Training Program for Local # 141 has been frustrated since December, 1973. An examination of the

> Sheet Metal Workers Apprenticeship Standards discloses that it is part and parcel of the Affirmative Action Plan for the Cincinnati Area Sheet Metal Workers. In order for the Affirmative Action Plan to meet its goals, it is necessary for the Apprenticeship Training Program to function properly, as generally one can only become a journeyman sheet metal worker after having completed serving as an apprentice.

To grant the Petition will only help the Petitioners perpetuate this program of frustration. The Court must deny the Petition.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CIVIL NO. C-1-81-393

SANDMAN, et al.

Plaintiffs,

vs.

LOCAL UNION NO. 141, et al.

Defendants.

AFFIDAVIT OF RICHARD J. BLUM

Richard J. Blum after being duly sworn, states the following:

1. He is employed by the sheet metal company known as Kirk and Blum.

2. He has served as a management representative on the Sheet Metal Workers Local 141 Apprentice Training Trust Fund ("JAC") up until January 1, 1977.

3. During his service on the JAC, the union representatives prevented full implementation of the Trust Fund's provisions for appointments and training of apprentices.

4. At a meeting of the JAC on December 13, 1973, management representatives moved to appoint twenty-seven (27) new apprentices to the program, based on requirements sub-

mitted by management. The vote on that deadlocked 2-2. The union moved to admit twelve (12) new apprentices to the program. That deadlocked 2-2. (See attached Exhibit A of the Minutes of the meeting.) In pursuance to Article X of the Collective Bargaining Amendment, the deadlock was appealed to the Local Joint Adjustment Board ("LJAB") on January 14, 1974, which to the best of my recollection, deadlocked as well. That was appealed to the two-man Panel. That Panel heard the appeal April 11, 1974. It found the JAC was in violation of the JAC Trust Fund's agreement "for failure to supply, award and indenture apprentices." The Panel ordered the supplying of apprentices and retained jurisdiction. That decision was announced on June 7, 1974). (See attached Exhibit B.)

5. On October 22, 1974, the two-man Panel was reconvened and found that the JAC was still not in compliance with the April 11, 1974 order and ordered the appointment of seven (7) apprentices and the indenturing of "the next class", among other things. That decision was announced on or about November 25, 1974. (See attached Exhibit C.)

6. On March 3, 1975, the panel was again reconvened. It again concluded that there had been a failure to comply with the instructions and conclusions of the Panel Hearings on April 11, 1974 and October 22, 1974, and with the provisions of the Trust Fund agreement. It ordered the JAC "to comply with all its obligations. . ." This decision was announced on April 4, 1975. (See attached Exhibit D.)

7. On April 21, 1975, the JAC met. Management moved for seven (7) new apprentices and this was deadlocked. (See attached Exhibit E.)

8. On April 25, 1975, the LJAB was convened. A motion that the LJAB take over the apprentice program from the JAC deadlocked 3-3. (See attached Exhibit F.)

9. On May 1, 1975, the Sheet Metal Contractors Association

of Greater Cincinnati, Inc. ("SMCA"), by letter, suggested to Local 141 a meeting be held on May 8, 1975, to determine why there was not compliance with the decisions of three Panel Hearings. On May 6, 1975, by letter, Local 141 rejected such a meeting. (See attached Exhibits G and H.) On May 9, 1975, the SMCA appealed to the National Joint Adjustment Board ("NJAB") complaining of non-compliance with the three orders of the Panel and the various deadlocks and that the industry needs "a viable Apprentice Training Program; the employers are willing to train apprentices but the Local 141 deadlocks attempts to indenture boys for training." (See attached Exhibit J.)

10. On July 28, 1975, the NJAB ordered compliance with the Panel decisions, the furnishing of apprentices to employers, the indenture of sufficient apprentices to honor valid orders, and the use of apprentices on layoff. This decision was announced on or about August 1, 1975, nearly twenty (20) months after the initial deadlock of December 13, 1973. (See attached Exhibit K.)

/s/ RICHARD J. BLUM
Richard J. Blum

Sworn to before me and subscribed in my presence this 5th day of August, 1981.

/s/ HERMAN J. LINZ, JR.
Notary Public

HERMAN J. LINZ, JR.
Notary Public, Hamilton County, Ohio
My Commission Expires August 13, 1983

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CIVIL NO. C-1-81-393

SANDMAN, et al.

Plaintiffs,

vs.

LOCAL UNION NO. 141, et al.

Defendants.

AFFIDAVIT OF JAMES ESPOSITO

James Esposito, after being duly sworn, states the following:

1. I serve as Chapter Manager of the Sheet Metal Contractors Association of Greater Cincinnati ("SMCA"). In such capacity I attend the Joint Apprentice Committee ("JAC") meetings, Local Joint Adjustment Board Meetings ("LJAB") and the likes.

2. At the meeting of the JAC on October 18, 1976, the question of apprentices came up again. The union representatives indicated they were not ready because they had not reviewed the hours of contractors who sought apprentices. (See attached Exhibit L.)

3. On October 25, 1976, at a special JAC meeting, requests of management for new apprentices were considered. Management then moved for the appointment of nine (9) new apprentices. The motion was deadlocked. (See attached Exhibit M.)

4. On February 21, 1977, at a JAC meeting, there was discussion about naming new apprentices. The union opposed it pointing out there were eleven (11) unemployed apprentices. Nothing further occurred as to the appointment of apprentices. (See attached Exhibit N.)

5. On October 30, 1978, at a JAC meeting there was a request for a new apprentice class. Local 141 representatives said they would give consideration to a new class in January. (See attached Exhibit O).

6. On January 3, 1979, at a JAC meeting, when the request for apprentices was reviewed, Local 141 representatives left the meeting because one of the JAC management representativs, John McDonald's company, "did not recognize the shop steward" and as a result, Local 141 "would not recognize John McDonald as a Member of this Committee." (See attached Exhibit P.) On January 8, 1979, I filed a request for the services of the LJAB. (See attached Exhibit Q.)

7. On February 5, 1979, at a meeting of the JAC, management representatives requested that thirty-three (33) new apprentices be indentured. That deadlocked. The union representative proposed fifteen (15) and that deadlocked. (See attached Exhibit R).

8. At the February 22, 1979, LJAB meeting, the management Trustee's motion that thirty-three (33) new apprentices be indentured deadlocked. Two other issues on JAC appointments of apprentices also deadlocked. (See attached Exhibit S).

9. On March 9, 1979, I filed a request for a Panel Hearing. (See attached Exhibit T.)

10. On April 19, 1979, the two-man Panel met and directed the JAC to "immediately indenture sufficient apprentices to honor all valid requests as per the Trust Agreement and the Standard Form of Union Agreement." That decision was announced an June 7, 1979. (See attached Exhibit U.)

On September 7, 1979, I complained to the National Sheet Metal Contractors Association ("SMACNA") about the failure of Local 141 to comply with the orders of the various Panels and its various delays. I attached to that a chronology of events. I noted that despite the announcement on June 7, 1979, by the Panel, that the JAC was immediately to indenture apprentices; Local 141 had delayed the implementation of that order for three (3) months. (See attached Exhibits V and W.)

The Chairman of the SMACNA forwarded it to the General President of the Sheet Metal Workers, Mr. Edward J. Carlough. (See attached Exhibit Y.) Nothing more happened on this request in the intervening twenty-three (23) months.

On April 14, 1980, at a meeting of the JAC, the requests for thirteen (13) apprentices by management were considered. Four (4) unemployed apprentices were assigned, but no new apprentices were named. (See attached Exhibit Z.)

11. On June 16, 1980, at a JAC meeting, management's request for twelve (12) apprentices was considered. Some of those were rejected. Then the union requested a delay on those requests until the July meeting. (See attached Exhibit AA). The July meeting was then postponed until August 18, 1980. At that meeting, management's requests that seven (7) apprentices be indentured was deadlocked. (See attached Exhibit BB.)

12. At a meeting on August 25, 1980, management's request for eleven (11) apprentices was deadlocked again. (See attached Exhibits CC and DD.)

13. On August 28, 1980, I wrote to James Hensley requesting that the Panel be reconvened because of Local 141's delays on requests for apprentices. (See attached Exhibit EE.) We have never received a response as to that request in the intervening twelve (12) months.

14. At the JAC meeting on October 7, 1980, the question

of when a new class would be appointed again was raised and nothing happened. (See attached Exhibit FF.)

15. At a meeting of JAC on March 16, 1981, the attached Motion for Definition of When an Apprentice Should Be Appointed was submitted to the committee and it deadlocked. (See attached Exhibit GG.) Upon that deadlock, the request for appointment of an umpire was made and no agreement was made with the union.

/s/ JAMES ESPOSITO
James Esposito

Sworn to before me and subscribed in my presence this 31 day of August, 1981.

/s/ ARNOLD MORELLI
Notary Public

ARNOLD MORELLI
NOTARY PUBLIC, STATE OF OHIO

CASE NO. 83-41

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; PAUL ROESSLER, KEVIN CAHILL, LEE COSTELLO, TRUSTEES OF SHEET METAL WORKERS LOCAL 141, APPRENTICE TRAINING,

Petitioners,

vs.

DAVID E. SANDMAN, JOHN E. McDONALD, STUART F. YOUNG, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING FUND,

Respondents.

PETITIONERS' REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO CERTIORARI

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Respondents.

PETITIONERS' REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO CERTIORARI

In their brief opposing certiorari Respondents have attempted to interject the same distortions which led the lower courts to the erroneous conclusions reached below. The distortions urged by the Respondents must be rejected.

I. There has never been any issue in this case relating to violation of affirmative action requirements or regulations.

The Respondents never mentioned affirmative action in their complaint. The idea was gratuitously thrown into the trial court's opinion as dicta. There never was a shred of evidence anywhere in the record of this case that the Petitioners were engaged in a plot to frustrate the affirmative action timetables and goals set forth in the Standards. The only reference anywhere in the record relating to affirmative action appears in the minutes of a meeting mentioned in paragraph 8 of the Esposito Affidavit which is included in the Appendix to Respondents' Brief at page 5a. The minutes reflect that Mr. Roessler, one of the union trustees and a Petitioner herein, suggested that instead of immediately taking thirty-three apprentices into the program from the existing list as proposed by the employer trustees, fifteen apprentices be taken in then (February, 1979) with subsequent retesting in June, 1979 in order to get more blacks and women into the program. Roessler also stated that the union trustees had previously requested that the minority trainees in the Prep-Jet Program be taken in as apprentices.

The insinuation of racial bias injected by the trial court and perpetuated by the Respondents is unfair and prejudicial. Affirmative action never was an issue. The only reference to it in the record shows that the union trustees were supporting the affirmative action goals and not frustrating them.

II. The history of JAC disputes is not relevant.

On pages 3-6 of their brief, Respondents recite a history of disputes which occurred between the trustee groups over the years. None of the history is relevant. The deadlocked resolution which is the subject of this case was not involved in any of the prior disputes. The only dispute involved here is the one which arose over the resolution proposed on March 16, 1981. The issue below and the issue here is whether the deadlock on *that resolution* is a deadlock over "administration" which would entitle the Respondents to appointment of an umpire under 29 USC § 186 (c) (5) (B).

III. The purpose of the resolution is not "to clarify ambiguities" as claimed by Respondents.

There are no ambiguities to clarify. The collective bargaining agreement provides that "the JAC shall grant apprentices on the basis of one apprentice for each four journeymen regularly employed throughout the year" (Petitioners' Appendix, p. 32-a-33a). The Standards as they exist now are the expression of the interpretation to be given to the terms of the collective bargaining agreement regarding apprentice training. The Standards were approved and signed by the collective bargaining parties. Section Sixteen of the Standards provides that nothing contained in the Standards shall be interpreted as being contrary to the present or subsequent bargaining agreements (Petitioner's Appendix, p.77a). The Standards clearly interpret "journeymen" to mean members of Local 141. Likewise, the term "regularly employed throughout the year" in the collective bargaining agreement has been interpreted in the Standards to mean "on the employer's payroll." As pointed out by the Petitioners in their peti-

tion, it is clear from the Standards that the term "year" means the present year, not the past year.

By approving and signing the Standards, by specifically recognizing them *as approved* as part of the collective bargaining agreement, and by specifically providing in the Standards that they shall be deemed consistent with future collective bargaining agreements, the collective bargaining parties have already clarified what the collective bargaining agreement means. It means what is stated in the Standards.

The Respondents completely ignore the structure and effect of the two instruments. There is no ambiguity. The difference in language between the collective bargaining agreement and the Standards does not create ambiguity. They are not contradictory; the Standards as they exist explain the meaning of the collective bargaining agreement.

Since the collective bargaining parties have already said that "journeymen" means "members of Local 141," the trustees do not have the authority to say, "no, it doesn't."

IV. The Standards are not part of the Trust Agreement.

The Respondents refer to the Standards as "Standards of the Trust." They ignore the fact that the Standards are not part of nor incorporated in the Trust Agreement. They are, on the other hand, specifically recognized as part of the collective bargaining agreement (Article XI, Section 1, Petitioners' Appendix, p.32a). This is a crucial fact which must not be ignored or distorted. The Trust Agreement provides in Article XIII, Section 2, (Petitioners' Appendix, p.61a) that the trustees have power to interpret, apply and construe the provisions of the Trust Agreement and that any such interpretation, construction, or application adopted by the trustees shall be

binding on the union, employer association, the employers and employees. The full binding power of the trustees is therefore limited to the terms of the Trust Agreement. The terms involved in the resolution are *not in* the Trust Agreement. They are in the collective bargaining agreement and the Standards. The Standards are part of the collective bargaining agreement. Interpretation of the collective bargaining agreement is subject to the grievance procedure of the collective bargaining agreement.

V. This court should consider and decide the meaning of "administration" as contained in 29 USC § 186 (c)(5)(B).

On page 18 of their brief, Respondents argue that the question of the meaning of "administration" is not properly before the court. They say that the question before the lower courts was whether the resolution fit within the contractual language of the Trust Agreement, "affairs of this trust," and not whether the resolution fit within the statutory language, "administration." Respondents' argument is without merit.

The trial judge believed that his power to appoint an umpire was derived from 29 USC § 186 (c) (5) (B), (Petitioners' Appendix, p.9a). Under the statute, a court must find that there is a deadlock on "administration" in order to appoint an umpire. The parties cannot restrict the statutory language by agreement. See *Hawkins* v. *Bennett,* 704 F.2d 1157, 1160 (9th Cir., 1983).

Whatever language the parties use must be synonymous with "administration." The parties cannot expand the jurisdiction of the trial court by using language broader than "administration." The trustees cannot manipulate contractual language to confer on themselves and hence

upon an umpire the power to change negotiated terms agreed upon by the bargaining parties. In the final analysis, all trustees can do is *administer* the negotiated agreements. When trustees venture into the areas of negotiation reserved to the bargaining parties, they run afoul of the principle expressed in *NLRB* v. *Amax Coal Co., et al,* 453 U.S. 322 (1981). The term "administration" is the key to this case. It is inextricably enmeshed in every argument made below. The court should use this case as an opportunity to define "administration." Although the Second, Sixth, Eighth, Ninth and Tenth Circuits have treated the question, there is no real concensus and no clear statement as to what the term means vis-a-vis *Amax*.

VI. CONCLUSION

The arguments raised by the Respondents in opposition to certiorari are meritless. Petitioners submit that this case raises important questions that need to be answered. It is the first case reaching this Court known to Petitioners that deals with "administration" in terms of an apprentice training trust. Petitioners respectfully submit that certiorari be granted.

Respectfully submitted,

. . . . . .

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